1427.

SUPREME COURT OF THE UNITED STATES.

No. 129.

PELEG WILBUR, APPELLANT,

vs.

SAMUEL ALMY.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR RHODE ISLAND.

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Bill in equity.

SAMSON ALMY
vs.
PELEG WILBUR.

Be it remembered, that at the November term, A. D. 1842, of the circuit court of the United States, for the Rhode Island district, the following bill was filed:

RHODE ISLAND DISTRICT, *sct.*

To the judges of the circuit court of the United States, for the district of Rhode Island.

Samson Almy, of Plainfield, in the State of Connecticut, a citizen of the State of Connecticut, brings this bill against Peleg Wilbur, of Coventry, a citizen of the State of Rhode Island, in the State of Rhode Island and Providence Plantations.

And therefore your orator complains, and says, that on the 7th day of March, A. D. 1828, , of Providence, in the State of Rhode Island, and doing business under the name and style of Rowland G. Hazard & Co., entered into an agreement with Christopher Lippitt, of Jewett City, in the State of Connecticut, a citizen of the State of Connecticut, whereby the said Rowland G. Hazard & Co. did agree to assume the payment of certain parcels of machinery, amounting to five hundred spindles, and preparation, then purchased or contracted for, by said Christopher Lippitt, and also for three hundred spindles, and preparation, to be thereafter contracted for by him, the said Christopher Lippitt; they, the said Rowland G. Hazard & Co., receiving bills of sale of the same machinery, as security for the amount loaned by said R. G. Hazard & Co., the amount not to exceed ten thousand dollars.

And the said Lippitt, on his part, agreed to use said machinery in his factory, at Jewett City, for the benefit of the contracting parties, in manufacturing cotton into $\frac{4}{4}$ brown sheetings, the yarn to be spun in numbers, from 16 to 18, to be well woven and well manufactured in all respects, and to pay all proper attention to the business of said mill, to receive the cotton in Providence, and deliver the goods manufactured there; and for and in consideration of which, he was to receive three and a half cents cash per yard, which was to be in full for manufacturing said goods. And the said R. G. Hazard & Co. further agree to pay all proper and necessary attention to purchasing the stock, disposing of the goods, negotiating drafts, and any and all business requisite for them to attend to in Providence, and charge nothing for the same, unless they guaranteed sales; in that case, the usual guarantee commission was to be allowed them. And it was further agreed, between the said R. G. Hazard & Co. and the said Lippitt, that the profits arising from said business should be equally divided between the parties. The

agreement to continue immediately, and continue until the 25th day of March, A. D. 18[illegible]. And if, at that time, the said Lippitt's part, or one-half of the profits, and the interest thereon, which was to be applied to the payment of the money advanced, should not pay said advance, the said Lippitt was to be at liberty to continue, until it should be paid for in that way, or to have the privilege of paying the deficit, with the interest from that time, in two years. And it was understood between the parties, that interest, at the rate of six per cent. per annum, should be allowed on all amounts, received or paid, by either of the contracting parties, (except the advance on account of purchase of machinery,) from the time at which it was received or paid, to the time of settlements, which were to be made semi-annually on all balances due at such settlements, to the time of final settlement. The accounts with the factory to be kept with the Griswold factory, and all just charges against said factory to be as binding on the contracting parties, as if entered into in their names.

And it was further understood and agreed, that the machinery mentioned in said agreement was to be held only by the said R. G. Hazard & Co. as collateral security for the money advanced, and that it was to be given up to the said Lippitt on his refunding said advance, until which time the said Lippitt agreed to keep it insured, as by reference to said contract hereto annexed, marked (A) will fully appear.

And your orator further represents, that the said Rowland G. Hazard & Co., in pursuance of their said agreement with said Lippitt, assumed on themselves the payment for said machinery, viz., eight hundred spindles, and preparation therefor; and did actually pay and advance the money for the same, to wit, the sum of nine thousand five hundred and sixty-seven dollars and forty-eight cents, and took bills of sale thereof in their own name; and that immediately upon the execution of said contract, viz., on the 7th day of March, A. D. 1828, the said R. G. Hazard & Co. began to supply said Lippitt with cotton, under said agreement, and to receive and sell the goods manufactured therefrom by the said Lippitt.

And your orator further says, that on or about the 30th day of May, A. D. 1829, the said R. G. Hazard & Co. failed, and on said day made and executed to Thomas R. Hazard and Charles Low, a deed of assignment of all their property, in trust, for the benefit of the creditors of said R. G. Hazard & Co. That said deed of assignment conveyed to said assignees all the right, title, and interest of the said R. G. Hazard & Co., in and to said contract and agreement with said Lippitt, and in and to the machinery therein referred to, and in and to all the profits to be derived from said contract and from supplying said Lippitt with cotton under the same.

And your orator further represents, that the said Rowland G. Hazard, as agent of the assignees of R. G. Hazard & Co., made a contract with your orator, some time in the year 1829, to supply said Lippitt with cotton, upon terms agreed upon between said R. G. Hazard, as agent of said assignees of R. G. Hazard & Co. and your orator, in conformity with their said contract with the said Lippitt.

And your orator further represents, that he proceeded, in conformity with his agreement with said R. G. Hazard, aforesaid, purchased cotton, made sales of the cloth, and paid other expenses, as by the account hereto annexed, marked (B,) will appear, until the 9th day of March, A. D. 1830.

And your orator further represents, that on the said 9th day of March, A. D. 1830, he purchased of the assignees of said R. G. Hazard & Co. all the interest which the said R. G. Hazard & Co., and the said assignees had, in and to said contract with said Lippitt, together with all their interest in said machinery, by a written contract of sale of that date, a copy of which marked (C,) is hereunto annexed. But your orator avers, that the said Low & Fenner, named in said bill of sale, never redeemed their half of the said contract, as provided for in said paper last mentioned, but declined doing the same; and the said Low & Fenner, from the time of the verbal contract in 1829, to the latter part of the year 1832, never claimed any interest in said contract, or offered or furnished any part of the cotton for said mill, or paid any part of the expenses. By virtue of which last mentioned bill of sale, and the subsequent neglect and refusal of said Low & Fenner to take any part in the contract, the said Samson Almy became solely interested in said contract, machinery, and every thing pertaining to said contract, as fully as said R. G. Hazard & Co., at any time theretofore, possessed and enjoyed.

And your orator further represents, that he continued to furnish said Lippitt with cotton under said agreement, and to do and perform everything on his part to be done and performed by the said agreement and contract of the said Hazard & Co., with said Lippitt, from the time of the verbal agreement between your orator and the assignees of R. G. Hazard & Co., in July, 1829, up to the 11th day of September, 1832, after which time said Lippitt did not send for any more cotton, and utterly refused to go on with said contract, as in equity and good conscience he was to bound to do.

And your orator further says, that said Lippitt fully understood and assented to the said contract between your orator and the assignees of said R. G. Hazard & Co., and fully assented and agreed that your orator should purchase the said contract and take the place of said R. G. Hazard & Co. in said contract, and that said machinery should remain pledged to your orator for the sums advanced by said Hazard & Co., or which might be advanced by your orator, and did go on in the execution of his part of said contract until said day last mentioned, when the said Lippitt neglected and refused to proceed any further in the fulfilment thereof on his part.

And your orator further states, that on the 18th day of August, 1831, he, with the assent and at the request of the said Lippitt, purchased of and paid to William Field the sum of five hundred and fifty dollars for a double speeder for said mill, the same being necessary for the successful operation of said mill.

And your orator further says, that on the said 11th day of September, 1832, there was due to him under the said contract the sum of five

[illegible] four [illegible] and five dollars and eighty-seventy cents, as by the account hereto annexed will appear, for which sum the said machinery in said mill was pledged by the terms of the contract aforesaid.

And your orator further says, that said sum, nor any part thereof, has never been paid by said Lippitt, nor has said machinery been delivered up to your orator, to satisfy the same; but on the contrary, the said machinery was on the day , A. D. , transferred by said Christopher Lippitt to said Peleg Wilbur, who now claims to be the owner thereof, exonerated from all lien or claim in favor of your orator whatever.

And your orator further shows, that up to the time of said transfer, by the said Lippitt, to the said Peleg Wilbur, he, the said Wilbur, well knew the contract between R. G. Hazard & Co. and said Lippitt afore referred to, and that the same was assigned and transferred to your orator, and that said machinery was pledged for the balance that might be due to your orator, and is in equity and good conscience bound to account with your orator for the sum due from said Lippitt to your orator on said 11th day of September, A. D. 1832, with interest to the present time, and also to account with your orator for the use of said machinery and speeder.

But the said Wilbur, well knowing that a large balance was, on said 11th day of September, due from said Lippitt to your orator on account of said machinery, and that said machinery was bound to the payment of said balance, refused, and still refuses, to account for the same, or to pay to your orator the sum of money for which the same is pledged to your orator.

And your orator further says, that on the 25th day of November, 1836, by his authorized agent, Samuel Bailey, he made a formal demand upon said Wilbur, for the delivery of the said machinery, described in the schedule annexed, marked (D,) it being the same purchased by said Hazard & Co. and your orator, under said contract. But the said Peleg Wilbur, refused to deliver the same to your orator, and utterly refused, and still refuses, to account with your orator for the value of said machinery, and for the use of the same, or for the sum due upon said contract for which said machinery was pledged.

And your orator further says, that he is advised by counsel that it would be proper to make the said Christopher Lippitt a party defendant to this bill, and the reasons why he is not joined is, that thereby the jurisdiction of this honorable court would be ousted, the said Lippitt being a citizen of the same State with your orator, to wit, the State of Connecticut.

To the end, therefore, that the said Peleg Wilbur may, if he can, show why your orator should not have the relief hereby prayed, and may upon his corporal oath, and to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the several interrogations hereinafter mentioned and set forth, that is to say:

First. Whether he, the said Peleg Wilbur, at or before the time he purchased said machinery of said Christopher Lippitt, had not seen,

known, read, understood, or been informed of the [illegible] aforesaid between the said R. G. Hazard & Co. and the said Christopher Lippitt.

Second. Whether he, the said Peleg Wilbur, at or before the time he purchased said machinery of the said Christopher Lippitt, did not know or believe, or had not heard or been informed, that the said contract between the said R. G. Hazard & Co. and said Christopher Lippitt had been transferred to your orator, by the said R. G. Hazard & Co., or by their assignees, with the assent of said Lippitt.

Third. Whether said Peleg Wilbur, at the time said Lippitt made said sale, or transfer of said machinery to him, or at any time before or since, paid any consideration therefor, and if any, how much?

Fourth. Whether the said Peleg Wilbur, at or before the time he purchased said machinery as aforesaid, did not know or believe, or had not heard or been informed, that there was due to your orator a large sum of money for advances made upon said machinery by the said R. G. Hazard & Co., and by your orator, or either of them, and that said machinery was pledged to the payment of said sum, by the terms of the contract aforesaid.

Fifth. Whether the said Peleg Wilbur, did not know or believe, or had not heard or been informed, at or before the time of said transfer of said machinery to him by said Lippitt, that said Lippitt had broken said contract entered into with said R. G. Hazard & Co., and had utterly neglected and refused to proceed in the execution of the same.

Sixth. Whether said Peleg Wilbur does not claim to be the owner of said property, or did not, on said 25th day of Nov., A. D. 1836, and if said Wilbur has sold, or conveyed the same, when, to whom, and for how much.

And that the said Peleg Wilbur may be decreed by this hon. court to account with your orator for the value of said machinery, with interest thereon, and for the use of said machinery from said 11th day of September, 1832, or to pay to your orator the balance of the principal sum of money advanced by the said R. G. Hazard & Co., for the said Lippitt, in payment or purchase of the said machinery, with the interest thereon, according to said contract, together with said sum of five hundred and fifty dollars, paid by your orator for said double speeder, with interest thereon, or that he may be decreed to deliver up to your orator said machinery and double speeder in like good order as when by him received, and pay to your orator all reasonable rent for the use of said machinery and double speeder since the 11th day of September, 1832. And that your orator may have such further and other relief in the premises as to this honorable court may seem meet, and the circumstances of the case may require.

May it please the honorable court to grant to your orator a writ of subpœna, to be directed to the said Peleg Wilbur, thereby commanding him, under a pain to be therein inserted and limited, personally to be and appear at the clerk's office of this honorable court at the next rule day thereof, and then and there full, true, direct and perfect answer make, to all and singular the premises, and further, to stand to, perform

order, direction, or decree therein, as to this honorable court shall seem meet; and your orator will ever pray.

SAMSON ALMY.

By his solicitors, WHIPPLE & RIVERS.

(A.)

This agreement, made and entered into between Christopher Lippitt of Jewitt City, Connecticut, of the one part, and R. G. Hazard & Co., of Providence, Rhode Island, on the other part, witnesseth: That the said Hazard & Co. do hereby agree to assume the payments of certain parcels of machinery, amounting to five hundred spindles and preparation, now purchased or contracted for by said Lippitt, and also for three hundred spindles and preparation, to be hereafter contracted for, by him, the said Lippitt, they receiving bills of sale of the same as security for the amount advanced, the amount not exceeding ten thousand dollars. And the said Lippitt, on his part, agrees to run the said machinery in his factory, at Jewett City, for the benefit of the contracting parties, in manufacturing cotton into 4-4 brown sheetings, the yarn to be spun from No. 16 to No. 18, well woven and well manufactured, in all respects, and pay all proper and necessary attention to the business of said mill, to receive the cotton in Providence, and deliver the goods there, for and in consideration of which he is to receive three and one half cents, cash, per yard, which is to be in full for the manufacturing of said goods. The said Hazard & Co. further agree to pay all proper and necessary attention to purchasing the stock, disposing of the goods, negotiating drafts, and any and all other business which it may be requisite for them to attend to in Providence, and charge nothing for the same, unless they guarantee sales; in that case the usual guarantee commissions to be allowed them.

It is further agreed, that the profits arising from said business shall be equally divided between the contracting parties. This agreement to commence immediately, and continue until the 25th day of March, 1830; and if, at that time, the said Lippitt's part, or one half of the profits, with the interest thereon, which are to be applied to the payment of the money advanced, should not be sufficient to pay said advance, he is to be at liberty to continue until it shall be paid for in this way, or to have the privilege of paying the deficit, with the interest, from that time in two years, from the termination of this contract. It is also understood that interest at the rate of 6 per cent. per annum is to be allowed on all amounts received or paid by either of the contracting parties (except the advance on account of purchase of machinery) from the time at which it was received or paid, to the time of settlement, which is to be semi-annual, and balances then due, to the time of final settlement. The account with the factory, in consequence of this agreement, is { CHARLES P. HUNTINGDON, JAMES STEADMAN, LAWYER, } Com. to be kept with the Griswold factory, and all just charges against said

factory, to be as binding on the contracting parties [illegible] names.

Providence, 3d month, March 7th, 1828.

Signed R. G. HAZARD & CO.
CHRISTOPHER LIPPITT.

Witness to the agreement of the contracting parties.

T. C. CARPENTER,
ASA STEADMAN.

It is understood that the machinery, mentioned in the foregoing instrument, is only to be holden by the said Hazard & Co. as collateral security for the money advanced, and that it is to be given up to said Lippitt on his refunding the said advance, until which time the said Lippitt hereby agrees to keep it insured.

Providence, March 7, 1828. C. LIPPITT,
R. G. HAZARD & CO.

(C.)

The assignees of R. G. Hazard & Co. hereby sell and convey to Samson Almy the right, title, and interest which they have to a certain contract with Christopher Lippitt, bearing date March (3d mo) 7th, 1828, (a copy of which is hereto annexed) together with the balance due from said Lippitt on account of payment for machinery, as expressed in said contract; also their right, title, and interest, to the machinery held as collateral security for the said balance due from said C. Lippitt agreeable to the aforesaid contract, a schedule of which is hereto annexed, for which the Samson Almy agrees to pay their (the said assignees) or account with them for the sum of five thousand dollars; and it is further agreed, that if Low and Fenner should redeem their one-half of the aforesaid contract by the payment of the drafts drawn on them by R. G. Hazard & Co. on account thereof, and to return one-half of the aforesaid five thousand dollars to said Samson Almy, he relinquishing to said Low and Fenner all claims upon the aforesaid one-half part of the said contract.

Providence, 3d month 9th, 1830.

For assignees of R. G. Hazard & Co.
R. G. HAZARD,
R. G. HAZARD & CO,
Witness—A. E. FORBUSH. SAMSON ALMY.

Whereas, R. G. Hazard, for the assignee of R. G. Hazard & Co., has made an agreement with Samson Almy, bearing date 3d month 9th, 1830, relative to contract existing between Christopher Lippitt and R. G. Hazard & Co., dated March 7th, 1828, and of the machinery held by them as collateral security, by debts due from Christopher Lippitt and drafts drawn on Low and Fenner. I hereby ratify and confirm the above agreements the same as if made by myself as assignee of R. G. Hazard & Co.

South Kingston, 3d month 10th, 1830.

THOMAS R. HAZARD, *Assignee.*

Witness—ROBERT RATHBONE.

(D.)

Schedule of machinery.

Drawer, spooler, and warper.
Picker.
Drawing frame.
12 power looms.
6 power looms.
Drawing frame.
4 throstles, 72 spindles each.
1 Brewster's roper.
1 mule, 216 spindles.
2 throstles, 72 spindles each.
1 mule, 216 spindles each.
13 cotton carding machines and cards.
2 double speeders, Field's make.

Dr.

1830.			
4th month, 1st.	For amount Waterman & Arnold's bill, 10 bales cotton, 4,057 lbs., at 11¼.....	.....	$466 56
" " "	For amount Peter Remsen & Co., invoice— 16 bales cotton, (N. O.) 6,303 lbs. 7 " " " 2,843 "		
	9,146		
	Deduct 2 per cent. 183		
	8,963 lbs. at 11 cts.	$985 93	
	Add 1 per cent.....	9 86	
			995 79
4th month, 5th.	Paid brokerage and drayage, cotton in N. York	.....	4 32
" " 16th.	" drayage.....	.....	12
5th month, 25th.	Paid frt. 19 bales goods for Samuel Slater, Baltimore, 92 feet, at 4 cents.....	3 68	
	Paid wharfage, ¼ cent per foot.....	23	
	Paid drayage in Baltimore.....	50	
	Paid frt. on 19 bales goods consigned to J. & M. Brown, and M. D. Lewis, Philadelphia, per schr. Henry Clay, freight, drayage, &c.	6 49	
			10 90
6th month, 1st.	Paid Christopher Lippitt, for man'fg 22 bales 4-4 sheetings, as per invoice dated 4th month, 28th, 8,881¾ yards, 3½ cents.....	310 85	
	Paid Christopher Lippitt, for man'fg 41 bales 4-4 sheetings, as per invoice, dated 5th month, 7th and 27th, 16,571¼ yards, at 3½ cents....	579 99	
			890 84
" " 4th.	Paid Geo. Arnold's bill— 20 bales upland cotton 6,043 8 square do. do. 2,396		
	8,439 lbs., 11¼ cents.	.....	949 39
" " 12th.	Paid drayage, labor, &c., on cotton.....	.....	54
" " 17th.	Paid Christopher Lippitt, for man'fg 16 bales 4-4 sheetings, 6,444¾ yards, 3½ cents.....	.....	225 57
7th month, 1st.	Paid wharfage, 25 bales goods for Albion....	.....	38
" " "	Paid Prov. D. B. & C. Co., for bleaching and callendering 169 pieces goods.....	62 63	
" " "	Paid Christopher Lippitt, for man'fg 25 bales 4-4 sheetings, 10,483 yards, at 3½ cents.....	366 90	
			429 53
" " 6th.	Paid Christopher Lippitt, for man'fg 8 bales 4-4 sheetings, 3,196¼ yards, at 3½ cents....	.....	111 88
" " 12th.	Paid freight on 8 bales goods to Philadelphia, per schr. James Burrill, wharfage, drayage	.....	2 75
	Amount carried forward....	.....	$4,088 57

with Grissom & Lacy. Cr.

1830.			
7th month, 6th.	By nett sales of 19 bales brown sheetings, as per account sales of J. & M. Brown, and M. D. Lewis, due 8th month, 14th, 1830.....	.....	$673 84
" " 16th.	By nett sales of cotton goods, as per acc't sales of Cobb, Wyman & Co., due 4th month, 26th, 1831.....	.....	687 65
" " 19th.	By cash received of Rowland G. Hazard, for 2 bales Upland cotton, 402, 307—709 lbs., at 11 cents.....	.....	81 53
	Amount carried forward....	.....	$1,443 02

Dr. Sam[illegible] in account

1830.	Amount brought forward.....	.....	$4,088 57
7th month, 23d.	For amount paid Providence D. B. & C. Co., for bleaching and callendering 104 pieces goods, 908 lbs., at 3¼ cents.....	$31 78	
	For callendering 3,273½ yards, at 2 mills.....	6 55	
			38 33
8th month, 2d.	For amount of Geo. R. Arnold, invoice— 11 bales Upland cotton, 3,569 lbs., at 11 cents	392 59	
	7 " " " 2,052 lbs., at 11¼ cts.	230 85	
			623 44
" " "	Paid Christopher Lippitt, for man'fg 8 bales 4-4 sheetings, 3,240 yards, 3½.....	113 40	
	Paid C. Lippitt, for man'fg 18 bales 4-4 sheeting, 7,281 yards, at 3½ cents.....	254 86	
			368 26
" " 3d.	Paid C. Lippitt, for man'fg 7 bales 4-4 sheeting, 2,862¾ yards, at 3½ cents.....	.....	100 20
" " 13th.	Paid C. Lippitt, for man'fg 7 bales 4-4 sheeting, 2,873 yards, at 3½.....	.....	100 58
9th month, 3d.	Paid Christopher Lippitt, for man'fg 20 bales 4-4 sheeting, 8,136¾ yards, at 3½.....	.....	284 77
" " "	Paid Waterman & Arnold's bill—27 bales of Upland cotton, 9,328 lbs., at 12 cents.....	1,119 36	
" " "	Paid Prov. D. B. & C. Co., for bleaching and callendering 91 pieces sheeting.....	33 42	
" " "	Paid for bleaching 91 pieces sheeting.....	32 18	
" " "	Paid drayage.....	40	
			1,185 36
" " 23d.	Paid postage to 9th month, 15th.....	.....	2 52
" " 24th.	Paid C. Lippitt, for man'fg 23 bales 4-4 sheeting, 9,397 yards, at 3½ cents.....	.....	328 90
10th month, 4th.	Paid C. Lippitt, for man'fg 10 bales 4-4 sheeting, 4,063 yards, at 3½ cents.....	.....	142 21
" " 9th.	Paid Providence D. B. & C. Co., for bleaching 2,190 lbs. cloth, 3½.....	76 65	
	Paid for callendering 8,181 yards, at 2 mills..	16 36	
			93 01
" " "	Paid Bowen B. & C. Co., for bleaching 1,320 lbs. cloth, at 3½ cents.....	46 20	
	Paid for callendering 4,862½ yards, at 2 mills	9 72	
			55 92
" " 15th.	Paid Christopher Lippitt, for man'fg 13 bales 4-4 sheetings, 5,273 yards, at 3½.....	.....	184 56
" " 19th.	Paid freight, labor, wharfage, &c., on 10 bales goods sent N. & H. Tingley.....	.....	3 47
" " 20th.	Paid Christopher Lippitt, for man'fg 13 bales 4-4 sheetings, 5,316 yards, at 3½ cents.....	.....	186 06
	Amount carried forward....	.....	$7,786 16

Cr.

1830.	Amount brought forward....	.....	$1,443 02
9th month, 10th.	By nett sales of 8 bales bleached sheetings, as per account sales of Cobb, Wyman & Co., due 5th month, 7th, 1831.....	.....	548 72
10th month, 25th.	By nett sales of sheetings, for J. & M. Brown, M. D. Lewis, due 3d month, 21st, 1831....	.....	402 99
	Amount carried forward....	.....	$2,394 73

Dr. S[illegible]

1830.		Amount brought forward....	.....	$7,786 16
11th month, 1st.		Paid Christopher Lippitt, for man'fg 9 bales 4-4 sheetings, 3,669¼ yards, at 3½ cents.....	.....	128 42
" " "		Paid Bowen B. & C. Co., for bleaching 1,454 lbs. goods, at 3½ cents.....	$50 82	
		Paid for callendering 5,277¾ yards, at 2 mills.	10 55	
				61 37
" " 4th.		Paid Providence D. B. & C. Co., for bleaching 1,217 lbs. goods, at 3½ cents.....	42 59	
		Paid callendering 4,493 yards, at 2 mills.....	8 99	
				51 58
" " 19th.		Paid W. Blodget & Co.'s bill of cotton, 2 bales, 303, 299—602 lbs., at 13 cents.....	$78 26	
		Off 4 per cent.....	3 13	
				75 13
" " "		Paid Christopher Lippitt, for man'fg 17 bales 4-4 sheetings, 6,892½ yards, at 3½ cents.....	.....	241 23
" " 23d.		Merit & Graves' invoice of 22 bales Upland cotton, 6,966 lbs., at 12½ cents.....	.....	870 75
" " 25th.		Paid Bowen B. & C. Co., for bleaching 332 lbs. cloth, at 3½ cents.....	11 62	
		Callendering 1,207 yards, at 2 mills.....	2 41	
				14 03
12th month, 4th.		Paid David Barton for frt. goods to Baltimore	.....	2 33
" " 10th.		Paid Christopher Lippitt, for man'fg 11 bales 4-4 sheetings, 4,498¾ yards, at 3½ cents.....	157 44	
		Paid J. & R. Peckham for invoice 22 bales Upland cotton, 7,352 lbs., at 11¾ cents.....	863 74	
				1,021 18
" " 24th.		Paid J. & R. Peckham for freight 22 bales cotton from New York.....	9 90	
		Wharfage, drayage, labor, storage, &c.....	4 06	
				13 96
" " 30th.		Paid Christopher Lippitt, for man'fg 24 bales 4-4 sheeting, 9,717 yards, at 3½ cents.....	.....	340 10
" " 31st.		Paid Brown & Lewis for 11¾ yds, short measure, sold 10th month, 15th, at 9¾.....	1 05	
		To error in charging sales, due 3d month, 21st	15	
				1 20
" " "		Paid Amsbury & Wetherell for freight, goods per wagon, sundry times.....	.....	37 69
				$10,645 13

1831.		For balance of old account brought forward.	.....	$321 85
1st month, 12th.		Paid Christopher Lippitt, for man'fg 10 bales cotton goods, 4,720½ yards, at 3½ cents.....	.....	165 22
" " 22d.		Paid postage sundry letters.....	.....	6 06
		Amount carried forward....	.....	$493 13

Cr.

1830.	Amount brought forward....	.....	$2,394 73
11th month, 9th.	By nett sales of 10 bales 4-4 sheetings, as per account sales of John Spring, due 7th month, 6th, 1831.....	.....	364 09
" " 19th.	By 9 bales 4-4 brown sheetings, 117 ps., 3,669¼ yards, sold Charles Potter, at 8¼ cts. cash..	.....	306 48
12th month, 7th.	By 11 bales 4-4 sheetings, 4,498¾ yards, sold Charles Potter, at 8¼ cents.....	.....	388 02
" " 30th.	By 24 bales 4-4 sheetings, 9,717 yards, sold Chas. Potter, at 8¼ cents.....	.....	838 09
" " 31st.	By nett sales of brown and bleached sheetings, by J. & M. Brown, and M. D. Lewis, due 5th month, 26th, 1831.....	.....	3,396 26
" " "	By nett sales cotton goods by Amsbury and Wetherell, due 4th month, 30th, 1831.....	.....	2,635 61
	Balance carried forward.....	.....	321 85
			$10,645 13

1831.			
1st month, 12th.	By 10 bales 4-4 sheetings, 4,720½ yards, sold Charles Potter, at 8¼ cents.....	.....	$407 15
	Amount carried forward....	.....	$407 15

Dr. Sam[illegible] Almy in account

1831.			
		Amount brought forward....	$493 13
2d month, 8th.	Paid Christopher Lippitt, for man'fg 16 bales sheetings, 7,455¾ yards, 3½ cents.....		260 96
" " 28th.	Paid C. Lippitt, for man'fg 14 bales sheetings, 6,449¼ yards, at 3½ cents.....		225 73
3d month, 1st.	Paid Wm. Blodget & Co.'s bill, 8 bales of Upland, 2,440, at 10¾ cents.....		262 30
" " 3d.	Paid guarantee commissions on sales cotton goods by Amsbury & Wetherell, $2,635 61, 2 per cent.....		52 71
" " 8th.	For bal. of interest, to 12th month, 31st, 1820		272 91
" " 11th.	Paid Christopher Lippitt, for man'fg 12 bales 4-4 sheetings, 5,543¼ yards, 3½ cents.....		194 02
" " 25th.	Paid A. & M. Kechum, for 30 bales Upland cotton, 13,562 lbs., at 11 cents.....	$1,491 82	
	Less 2 per cent. for cash.....	29 84	
			1,461 98
" " 29th.	Paid C. Lippitt, for man'fg 18 bales sheetings, 8,328½ yards, at 3½ cents.....		291 40
" " 30th.	Paid Amsbury & Wetherell, frt. cotton goods		1 83
" " "	Paid A. & M. Ketchum, brokerage, drayage, &c.		10 99
4th month, 25th.	Paid drayage 11 bales of goods.....		22
" " 26th.	Paid Christopher Lippitt, for man'fg 11 bales sheetings, 4,771¾ yards, at 3½ cents.....		167 03
" " 30th.	Paid drayage.....		13
5th month, 2d.	Paid brokerage 2 lots cotton bought in New York, 44 bales.....		8 25
" " 10th.	Paid C. Lippitt, for man'fg 20 bales sheetings, 8,629¾ yards, at 3½ cents.....		302 04
" " 27th.	Paid drayage.....		58
" " 31st.	Paid C. Lippitt, for man'fg 12 bales sheetings, 5,223¼ yards, at 3½ cents.....		182 81
" " "	Paid drayage.....		64
6th month, 3d.	Paid Christopher Lippitt, for man'fg 9 bales 4-4 sheetings, 3,872 yards, at 3½ cents.....		135 55
7th month, 1st.	Paid Christopher Lippitt, for man'fg 22 bales 4-4 brown sheetings, 9,603½ yards, at 3½ cts.		336 12
" " 4th.	Paid drayage.....		69
" " 5th.	Paid George R. Arnold, for 24 bales Upland cotton, 7,849 lbs., at 11¼ cents.....		883 01
" " 11th.	Paid postage of letters to 6th month, 15th....		3 50
" " 16th.	Paid drayage and labor.....		35
	Amount carried forward....		$5,548 97

Cr.

1831.			
	Amount brought forward....	.....	$407 15
2d month, 8th.	By 16 bales 4-4 sheetings, 7,455¾ yards, sold Charles Potter, at 8⅝ cents.....	.....	643 06
" " 28th.	By 14 bales 4-4 sheetings, 6,449½ yards, sold Charles Potter, at 8⅝ cents.....	.....	556 25
3d month, 11th.	By 12 bales 4-4 sheetings, 5,543¾ yards, sold Charles Potter, at 8⅝ cents.....	.....	478 10
" " 12th.	By nett sales of 8 bales bleached sheetings, as per account sales of John Spring, due 10th month, 27th, 1831.....	.....	544 14
" " 25th.	By nett sales of bleached sheetings, per acc't sales rendered by Amsbury & Wetherell, due 9th month, 23d, 1831.....	.....	331 53
4th month, 26th.	By 1 bale sheeting, No. 631, 408¾ yards, sold R. G. Hazard, at 9½ cents.....	.....	40 73
" " 30th.	By 10 bales 4-4 sheetings, 4,344 yards, sold Hacker, Brown & Co., at 9¾ cents.....	.....	423 54
7th month, 5th.	By allowance of Christopher Lippitt on bale of sheetings, No. 615, 33¾ yards, at 3¼ cents..	.....	1 18
" " "	By nett sales sheetings, per account sales of Jenkins, Merritt & Co., due 1st month, 24th, 1832.....	.....	1,073 43
" " 9th.	By 3 bales sheetings, 1,315¾ yards, sold Edward W. Lawton, at 9¾ cents.....	.....	128 28
" " 14th.	By 1 bale sheeting, 433¼ yards, sold A. & C. Day & Co., at 9¾ cents.....	.....	42 24
	Amount carried forward....	.....	$4,669 63

Dr. Samuel Wing in account

1831.	Amount brought forward....	.....	$5,548 97
7th month, 19th.	Paid Christopher Lippitt, for man'fg 16 bales 4-4 sheetings, 6,998¼ yards, at 3½ cents.....	.....	244 94
" " "	Paid drayage, cotton and cotton goods.....	.....	89
8th month, 8th.	Paid Christopher Lippitt, for man'fg 15 bales 4-4 sheetings, 6,573 yards, at 3½ cents.....	.....	230 06
" " 9th.	Paid drayage.....	.....	79
" " 19th.	Paid C. Lippitt, for man'fg 20 bales of sheetings, 8,750 yards, at 3½ cents.....	.....	306 25
9th month, 19th.	Paid C. Lippitt, for man'fg 15 bales 4-4 sheetings, 6,528¾ yards, at 3½ cents.....	.....	228 52
" " "	Paid for postage.....	.....	1 09
" " 29th.	Paid Christopher Lippitt, for man'fg 11 bales sheetings, 4,746½ yards, at 3½.....	.....	166 13
10th month, 1st.	Paid Bowen B. & C. Co., for bleaching 2,926 lbs. cotton goods, at 3½ cents.....	$102 41	
	Paid for callendering 10,547¼ yards, at 2 mills	21 09	
			123 50
" " 3d.	Paid Geo. R. Arnold, for 25 bales Upland cotton, 7,755 lbs., at 10½ cents.....	814 27	
	Paid drayage.....	1 00	
			815 27
" " 6th.	Paid drayage 11 bales goods.....	.....	22
" " 26th.	Paid Christopher Lippitt, for man'fg 24 bales sheeting, 10,387¾ yards, at 3½ cents.....	.....	363 57
11th month, 3d.	Paid drayage.....	.....	25
" " 14th.	Paid Christopher Lippitt, for man'fg 16 bales sheetings, 6,936½ yards, at 3½ cents.....	.....	242 78
12th month, 1st.	Paid C. Lippitt, for man'fg 21 bales 4-4 sheetings, 9,022 yards, at 3½ cents.....	.....	315 77
" " 8th.	Paid Charles Potter, for short measure on 7 bales sheetings, 31½ yards, at 8½ cents.....	.....	2 72
" " "	Paid Providence D. B. & C. Co., for bleaching and beetling 210 pieces, 1,804 lbs. cloth, at 5 cents.....	90 20	
	Do. do. 168 pieces, 1,504 lbs., at 5 cts.	75 20	
			165 40
" " 9th.	Paid S. N. Richmond for 1 piece Burlaps, 143 yards, at 12¼ cents.....	.....	17 52
" " 10th.	Paid Orray Taft, for—		
	19 bales Upland cotton, 6,640 lbs., at 9½ cents	630 80	
	21 do do do 6,660 lbs., at 9¾ cents	649 35	
	7 do do do 2,460 lbs., at 9½ cents	233 70	
			1,513 85
	Amount carried forward....	.....	$10,288 49

with Griswold Factory. Cr.

1831.			
	Amount brought forward....	.....	$4,669 63
8th month, 13th.	By error in extension goods, sold Charles Potter 11th month, 19th, 1830.....	.....	10 00
" " 27th.	By nett sales of 21 bales sheetings, per account sales rendered by J. & M. Brown, and M. D. Lewis, due 12th month, 24th, 1831.....	.....	892 71
10th month, 8th.	By nett sales of brown sheetings, per account sales of Jenkins, Merritt & Co., due 4th month, 27th, 1832.....	.....	1,692 46
11th month, 4th.	By 1 bale sheetings, 431¼ yards, sold W. & S. Almy, at 9¼ cents.....	.....	40 97
12th month, 8th.	By allowance of Christopher Lippitt, on 7 bales sheetings, sold Charles Potter, 31¼ yards short, at 3¼ cents.....	.....	1 10
	Amount carried forward....	.....	$7,306 87

Dr. Samuel Almy in account

1831.	Amount brought forward....	.....	$10,288 49
12th month, 13th.	Paid insurance on goods on board Richard Rush, $800, at 1 per cent.....	$8 00	
" " "	Paid for policy.....	1 00	
			9 00
" " "	Paid Bradford & Adams, for wharfage cotton goods and cotton, to 11th, 29th, 1831.....	.....	6 04
" " 17th.	Paid Christopher Lippitt, for man'fg 14 bales 4-4 sheetings, 5,976 yards, at 3½ cents.....	.....	209 16
" " 30th.	Paid Christop'r Lippitt's bill, rendered wharfage to 12th month, 27th, 1830, at Bradford & Adams.....	4 02	
	Paid drayage cotton, 3d month, 12th, 1831...	25	
	5 coils No. 32, bot. 3d month, 29th, 1831, at $6 25.....	31 25	
	10 lbs. harness twine, bot. of J. Chapin & Co.	8 00	
	1 piece Burlaps, 138 yards, at 12 cents.....	16 56	
	5 lbs. harness twine, bot. of John Farnum & Co.....	4 25	
			64 33
" " 31st.	Paid Cobb, Wyman & Co., allowance on bleached goods sold 8th month, 1830.....	.....	2 06
" " "	Paid Jenkins, Merritt & Co., for postage and allowance on goods.....	.....	1 06
" " "	Paid Providence D. B. & C. Co., for bleaching and beetling 11 bales sheetings, 1,945 lbs., at 5 cents.....	.....	97 25
" " "	For balance of interest to 12th month, 31st, 1831, as per account rendered.....	.....	184 80
			$10,862 19

1832.	For balance of old account brought forward	.....	$390 93
1st month, 6th.	Paid for 6 bales, for cloth not charged at the time of bleaching.....	.....	1 50
" " 12th.	Paid J. M. Earle, wharfage 15 bales goods...	.....	45
" " 13th.	Paid Christopher Lippitt, for man'fg 17 bales 4-4 sheetings, 7,284½ yards, at 3½ cents.....	.....	254 96
3d month, 9th.	Paid Christopher Lippitt, for man'fg 48 bales 4-4 sheetings, 20,656 yards, at 3½ cents.....	.....	722 96
" " 10th.	Paid drayage.....	.....	57
" " 29th.	Paid Christopher Lippitt, for man'fg 29 bales 4-4 sheetings, 12,530 yards, at 3½ cents.....	.....	438 55
" " 30th.	Paid Geo. R. Arnold, for 17 bales Upland cotton, 5,932 lbs., at 11⅝ cents.....	.....	689 60
	Amount carried forward....	.....	$2,499 52

1831.		Amount brought forward....	.....	$7,306 87
12th month, 12th.		By nett sales sheetings, per account sales of J. & M. Brown and M. D. Lewis, average due 6th month, 20th, 1832.....	$1,384 78	
		By nett sales sheetings of do. do. due 5th month, 25th, 1832.....	202 51	
				1,587 29
"	" 14th.	By cash received of W. & S. Almy, for wharfage of 7 boxes machinery, charged by error to Griswold factory.....	.....	42
"	" 31st.	By nett sales of sheetings, per account sales of Jenkins, Merritt & Co., due 6th month, 27th, 1832.....	.....	1,378 86
"	" "	By nett sales 3 bales bleached sheetings, per account sales of Newhall & Bettle, due 8th month, 2d, 1832.....	.....	197 82
"	" "	By balance carried forward to new account...	.....	390 93
				$10,862 19

1832.				
3d month,	8th.	By 1 bale sheeting, No. 485, 14 pieces, 435¾ yards, sold W. & S. Almy, at 9 cents.....	.....	$39 21
"	" 26th.	By allowance of Christopher Lippitt, for short measure, 120¼ yards, per Brown & Lewis' sales, at 3½ cents.....	.....	4 21
		Amount carried forward....	.....	$43 42

Dr. Sam'l Abby in Account

1832.				
	Amount brought forward....	.....		$2,499 52
3d month, 31st.	Paid drayage cotton.....	.....		80
4th month, 16th.	Paid Bowen B. & C. Co., for bleaching and callendering 238 pieces sheeting.....	.....		86 18
" " 26th.	Paid Christopher Lippitt, for man'fg 23 bales 4-4 sheetings, 9,951¼ yards, at 3½ cents.....	$348 31		
	Paid Sam'l N. Richmond, for 1 piece Burlaps, 138 yards, at 12 cents.....	$1,656		
	Add 7 per cent.....	116		
		17 72		
				366 03
5th month, 2d.	Paid Christopher Lippitt, for man'fg 8 bales 4-4 sheetings, 3,487¼ yards, at 3½ cents.....	.....		122 05
" " 10th.	Paid Providence D. B. & C. Co., for bleaching and beetling 154 pieces sheetings, 1,270 lbs., at 5 cents.....	.....		63 50
" " 12th.	Paid postage sundry times.....	.....		63
" " 19th.	Paid Christopher Lippitt, for man'fg 11 bales sheetings, 4,820½ yards, at 3½ cents.....	.....		168 72
" " "	Paid Bowen B. & C. Co., for bleaching and callendering 140 pieces sheeting.....	.....		49 55
" " 22d.	Paid Geo. R. Arnold, for 17 bales N. Orleans cotton, 7,393 lbs., at 11 cents.....	.....		813 23
6th month, 2d.	Paid drayage.....	.....		69
" " 7th.	Paid Christopher Lippitt, for man'fg 18 bales 4-4 sheetings, 8,287½ yards, at 3½ cents.....	.....		290 06
" " 22d.	Paid Christopher Lippitt, for man'fg 20 bales 4-4 sheetings, 8,780¾ yards, at 3½ cents.....	.....		307 33
7th month, 14th.	Paid drayage.....	60		
	Paid Orray Taft, for 20 bales Upland cotton, 6,452 lbs., at 11¼ cents.....	725 85		
				726 45
" " 27th.	Paid Christopher Lippitt, for man'fg 16 bales 4-4 sheetings, 6,962 yards, at 3½ cents.....	.....		243 67
8th month, 3d.	Paid Christopher Lippitt, for man'fg 16 bales 4-4 sheeting, 6,970½ yards, at 3½ cents.....	.....		243 97
" " 8th.	Paid Christopher Lippitt, for man'fg 12 bales 4-4 sheeting, 5,247 yards, at 3½ cents.....	.....		183 64
" " 15th.	Paid drayage 20 bales sheetings.....	.....		25
" " 17th.	Paid Christop'r Lippitt, for man'fg 144 pieces sheeting, 4,501 yards, 3½ cents.....	.....		157 53
" " 18th.	Paid Providence D. B. & C. Co., for callendering and baling 144 pieces sheeting.....	.....		10 75
	Amount carried forward....	.....		$6,334 25

1832.			
	Amount brought forward....	.....	$443 42
4th month, 11th.	By nett sales of 6 bales bleached sheeting, per account sales of Newhall & Bettle, due 11th month, 8th, 1832.....	.....	370 60
" " "	By nett sales of brown sheetings, per account sales J. & M. Brown, and M. D. Lewis, due 8th month, 15th, 1832.....	.....	804 88
" " 12th.	By allowance of Christopher Lippitt, for short measure on Brown & Lewis' sales, 3d month, 31st, 1832, 67½ yards, at 3½.....	.....	2 36
6th month, 8th.	By do do do 35 yards, at 3½....	.....	1 22
" " "	By nett sales of 21 bales 4-4 sheeting, as per account sales of J. & M. Brown, and M. D. Lewis, due 1st month, 17th, 1833.....	.....	777 92
7th month, 13th.	By nett sales of 11 bales 4-4 sheeting, per account Field & Fobes, due 1st month, 17th, 1833.....	.....	430 20
" " 17th.	By nett sales of bleached and brown sheetings, by Jenkins, Merritt & Co., due 11th month, 29th, 1832.....	.....	3,296 60
	Amount carried forward....	.....	$5,727 20

Dr.

1832.			
	Amount brought forward....	.....	$6,334 25
9th month, 4th.	Paid Waterman & Arnold, for 8 bales Upland cotton, 2,652 lbs., at 12½ cents.....	$324 87	
	Paid S. N. Richmond, for 1 piece Burlaps...	16 30	
	Paid Christopher Lippitt, for man'fg 19 bales 4-4 sheetings, 8,287½ yards, at 3½ cents.....	290 07	
			631 24
" " 10th.	Paid Providence D. B. & C. Co., for bleaching and beetling 112 pieces sheetings.....	.....	40 38
" " 11th.	Paid Waterman & Arnold, for 13 bales cotton, 4,051 lbs., at 12½ cents.....	.....	496 25
" " 14th.	Paid drayage.....	.....	48
" " 21st.	Paid Christopher Lippitt, for man'fg 16 bales sheeting, 6,925 yards, at 3½ cents.....	.....	242 38
" " 29th.	Paid Christopher Lippitt, for man'fg 9 bales 4 4 sheetings, 3,954½ yards, at 3½ cents.....	.....	138 40
10th month, 24th.	Paid Christopher Lippitt, for man'fg 14 bales 4-4 sheeting, 6,108½ yards, at 3½ cents.....	.....	213 80
11th month, 13th.	Paid C. Lippitt, for man'fg 16 bales 4-4 sheetings, 6,933 yards, at 3½ cents.....	.....	242 65
" " 26th.	Do. do. for 9 do. 3,875½ yards, at 3½ cents	.....	135 65
12th month, 6th.	Do. do. for 6 do. 2,585½ yards, at 3½ cents	.....	90 48
" " 15th.	Paid Bradford & Adams, for wharfage of goods per "Admiral," and cotton shipped by her from 2d month, 28th, to 10th month, 23d, 1832.....	.....	4 36
" " 27th.	Paid Christopher Lippitt, for man'fg 4 bales sheeting, 1,520 yards, at 3½ cents.....	.....	53 30
" " 31st.	Paid Jenkins, Merritt & Co., for postage....	.....	1 13
" " "	For balance of interest to date.....	.....	286 32
" " "	For balance carried forward to new account..	.....	3,906 30
		.....	$12,817 27

1833.			
	Paid A. & C. Day & Co., for freight goods at sundry times.....	.....	$53 88
2d month, 20th.	Paid for drayage.....	.....	1 00
6th month, 5th	Paid for postage to date.....	.....	12 50
12th month, 31st.	For balance carried forward to new account..	.....	6,227 67
			$6,295 05

1832.			
	Amount brought forward....	.....	$5,727 20
9th month, 24th.	By nett sales brown and bleached sheeting, per account sales rendered by A. & C. Day & Co., due 2d month, 4th, 1833.....	.....	1,638 88
10th month, 19th.	By nett sales 504 pieces brown sheetings, by Field & Fobes, due 3d month, 29th, 1833...	.....	1,338 51
" " 24th.	By nett sales of bleached and brown cotton goods, by Jenkins, Merritt & Co., to date, averaging due 5th month, 24th, 1833.....	.....	1,106 16
11th month, 15th.	By 2 bales sheetings, 870¼ yards, sold Jewett & Read, at 8½ cents.....	.....	70 73
12th month, 29th.	By nett sales of 136 pieces sheetings, by Newhall & Bettle, due 5th month, 23d, 1833....	.....	389 74
" " 31st.	By nett sales of 4-4 sheeting, by J. & M. Brown, and M. D. Lewis, due 6th month, 20th, 1833.....	.....	468 18
" " "	By nett sales of 14,035¾ yards sheeting, by A. & C. Day & Co., due 6th month, 13th, 1833	.....	1,196 95
" " "	By sales 266 pieces sheetings, by Field and Fobes, due 8th month, 3d, 1833.....	.....	738 00
" " "	By sales sheeting to date, by Jenkins, Merritt & Co., due 8th month, 16th, 1833.....	.....	142 92
			$12,817 27

1833.			
	By balance of old account brought forward	.....	$3,906 30
1st month, 15th.	By allowance of C. Lippitt, short measure 28 yards, at 3½ cents.....	.....	98
5th month, 16th.	By sales of brown sheetings by Brown and Lewis, due 8th month, 2d.....	.....	584 20
" " "	Do. do. Jenkins, Merritt & Co., due 11th month, 10th.....	.....	499 49
" " "	Do. brown and bleached do., by Field & Fobes, due 10th month, 15th.....	.....	637 75
6th month, 3d.	Do. do. by A. & C. Day & Co., due 11th month, 17th.....	.....	666 33
			6,295 05
12th month, 31st.	By balance of old account brought forward...	.....	$6,227 97

Subpœna.

RHODE ISLAND DISTRICT, *sc:*

The President of the United States of America, to Peleg Wilbur, of Coventry, in the Rhode Island district, and a citizen of the State of Rhode Island, &c., greeting:

For certain causes offered our circuit court, for the first circuit within and for the Rhode Island district, in chancery, we hereby command and strictly enjoin you, that laying aside all other matters and things, and notwithstanding any other excuse, you personally appear at the clerk's office of said court, in Providence, on Monday, the seventh day of November next, being the rule day of said court, and then and there full, true, and perfect answer make, upon your corporal oath, to the bill of complaint of Samson Almy, of Plainfield, in the district of Connecticut, and a citizen of the State of Connecticut, now filed of record in the clerk's office of said court, and to do and receive whatever our said court shall order against you in the premises in this behalf; and hereof fail not, under the pains and penalties that may accrue in consequence of neglect thereof.

And the marshal of said Rhode Island district, or his deputy, is hereby commanded to make service of this writ, by reading the same to the said Peleg, or by leaving a true and attested copy thereof at his last and usual place of abode; all which to be done twenty days at least before said rule day. Hereof make his return on or before the rule day aforesaid.

Witness the honorable Roger B. Taney, our chief justice, at Providence, this seventeenth day of October, A. D. 1842.

JOHN T. PITMAN, *Clerk.*

RHODE ISLAND DISTRICT, *sc:*

COVENTRY, October 17, 1842.

Made service of this writ, on the within named Peleg Wilbur, by leaving a true and attested copy thereof at his last and usual place of abode, as required.

SYLVESTER HARTSHORN,
U. S. marshal.

Fees service -	$2 00
Travel 15 miles	1 50
Copy - -	50
	$4 00

Bond.

Know all men by these presents, that we, Samson Almy, of Plainfield, in the district of Connecticut, as principal, and Isaac P. Hazard,

of South Kingstown, in the district of Rhode Island, as surety, are firmly held and bound to Peleg Wilbur, of Coventry, in the said district of Rhode Island, in the sum of two hundred dollars, to be paid to the said Peleg Wilbur, his heirs or assigns; to which payment, well and truly to be made, we bind ourselves, our several and respective heirs, executors, and administrators, jointly and severally, by these presents.

Signed with our hands, sealed with our seals, and dated at Providence, this third day of February, A. D. 1843.

The condition of the above obligation is this: that, whereas the above named Samson Almy has commenced and is prosecuting in the circuit court of the United States, for the Rhode Island district, a bill of complaint against the said Peleg Wilbur; now, if the said Samson Almy shall well and truly pay, or caused to be paid, to the said Peleg Wilbur, his heirs or assigns, all such costs as the said Peleg Wilbur shall recover in said suit against him, the said Samson Almy, then the above obligation shall be void, otherwise remain in full force and virtue.

SAMSON ALMY, [SEAL.]
J. P. HAZARD. [SEAL.]

Signed, sealed, and delivered in presence of—
JESSE N. OLNEY.

Answer of Peleg Wilbur.

UNITED STATES OF AMERICA,
District of Rhode Island, sc.

Circuit court of the United States, for Rhode Island district. In chancery.

The answer of Peleg Wilbur, defendant, to the bill of Samson Almy, complainant.

The defendant, reserving to himself the right of exception to the said bill of complaint, for answer thereto saith, that he admits that Rowland G. Hazard & Co., and Christopher Lippitt, named in the complainant's said bill, did enter into an agreement on the seventh day of March, A. D. 1828; a copy of which said agreement is annexed to and made part of the complainant's said bill; but this defendant has no personal knowledge of the making of such agreement, and had no notice of its existence or provisions, except as is hereinafter set forth.

And this defendant further answering admits, that it is true that the said Rowland G. Hazard & Co. did fail and make an assignment to Thomas R. Hazard and Samuel Low, on the thirteenth day of May, A. D. 1829, as dated in the complainant's said bill.

And this defendant further answering admits, that the complainant did furnish said Lippitt with cotton, after the failure of said Rowland G. Hazard & Co., and until the eleventh day of September, A. D. 1832; and that he did pay the said sum of five hundred and fifty dollars to William Field for a double speeder.

And this defendant further answering says, that, in common with others, he did receive from said Lippitt a transfer of said machinery, by

a mortgage deed bearing date the 8th day of December, A. D. 1836, made to this defendant and other persons named therein, for the purposes therein mentioned; and that he received no other transfer of said machinery; and that the paper hereunto annexed, marked (A,) is a copy of said mortgage deed; and this defendant prays that the same may be taken as a part of this his answer.

And this defendant further answering says, that he did sell his interest in said machinery, on the first day of December, A. D. 1837, to Samuel C. Morgan and John W. Fanning, in the manner hereinafter particularly stated.

And this defendant admits, that William Bailey did make a demand on him for said machinery, as the agent and in behalf of the complainant, on the twenty-fifth day of November, A. D. 1836, or about that time, as stated in said bill.

And this defendant further answering says, that he does not know or believe, and therefore he denies, that there was due to the complainant, on the eleventh day of September, A. D. 1832, the sum of five thousand four hundred and five dollars and eighty-seven cents, under said last mentioned contract, or that any sum of money was so due to the said complainant.

And this defendant further answering, denies that he had any knowledge, at the time he received the mortgage of said machinery from said Lippitt as aforesaid, that the complainant had purchased of the said assignees of the said Rowland G. Hazard & Co. all the interest which said assignees and said Rowland G. Hazard & Co. had in and to said contract and in and to said machinery; and he also denies that he had any knowledge or notice that they, or any of them, had or claimed any interest in, or had any lien on, said machinery; and this defendant further denies, that either to his knowledge or belief the said Lippitt ever refused to go on with said contract with said Rowland G. Hazard & Co., or that said Lippitt understood and assented to the said contract between the assignees of the said Rowland G. Hazard & Co. and the complainant, or ever assented and agreed that the complainant should purchase said machinery, and that the same should remain pledged to the complainant for sums of money advanced by the said Rowland G. Hazard & Co., or which might be advanced by the complainant.

And to first interrogatory propounded in the complainant's said bill to this defendant, he, this defendant, answering, says:

That he did understand that there was a contract or agreement by and between the said Rowland G. Hazard & Co. and the said Christopher Lippitt, some time in the year 1828, by which the said Rowland G. Hazard & Co. were to pay for machinery, then purchased and to be purchased by said Lippitt, not exceeding in amount the sum of ten thousand dollars, and that the said Rowland G. Hazard & Co. were to be paid the sum they might so pay out of the profits arising from the business they were about to enter into, under said contract, with said Lippitt.

That by said contract said Lippitt was to receive and have three and one-half cents per yard for all the cloth he should manufacture under

said contract, said that the said Rowland G. Hazard & Co. were to have one-half of the profits of said business, in payment for doing the agency of the same, and for the interest of the money so by them paid on advance for said machinery, and that the other half of the profits were to be applied to the payment of the money so by them paid in advance for said machinery; but that further, or other than as herein stated, this defendant did not know of the particular provisions of said contract, and he has no knowledge or recollection of seeing said contract prior to the first day of December, A. D. 1837; that he did not know that said machinery was pledged for the money so paid or advanced as aforesaid, and that he has no recollection of ever hearing any thing in reference to it until after the mortgage from the said Lippitt to this defendant and others of said machinery, on the eighth day of December, A. D. 1835, as herein before stated; that he did not know that the bills of sale of said machinery were made out in the name of Rowland G. Hazard & Co., although he did understand at the time the agreement was made that the said Lippitt had then purchased part of the said machinery, and that he was to purchase the other part of the same. That said Lippitt resided in Jewett City, in the State of Connecticut, where the said machinery was to be operated, and that this defendant resided in Coventry, in this district; that this defendant understood that most of said machinery was purchased in Connecticut, but was ignorant of whom it was purchased, or on what terms; that part or all of the spinning was purchased of S. Newell & Co., of the city of Providence, but this defendant did not know that the bills of the same were made out in the name of the said Rowland G. Hazard [&] Co., or that there was any provision in said contract by which it was required, and that at that time it would not be deemed important in whose name the said machinery was purchased, because said Lippitt was then in good credit, and deemed sufficiently responsible.

And in answer to the second interrogatory propounded to this defendant by the complainant, this defendant further answering, says:

That prior to the time when the said machinery was mortgaged to him and others, as aforesaid, he did not know, nor had he heard or been in any way informed, nor did he then believe, that said contract between said Rowland G. Hazard & Co. and said Lippitt had been transferred to the complainant by said Rowland G. Hazard & Co., or their assignees, with the assent of said Lippitt; that this defendant did not know upon what conditions the complainant furnished cotton to said Lippitt, until in conversation with this defendant on the subject, while he was furnishing said Lippitt with cotton, the complainant stated to this defendant that he, the complainant, should not furnish the said Lippitt with cotton much longer, and that he, the complainant, had no other interest in the said machinery and contract except to get the amount of a debt due to him from said Rowland G. Hazard & Co., or the amount of a debt of the said Rowland G. Hazard & Co. due to some other person, and for which the complainant was holden, (the impression of this defendant is that it was the latter,) and that the com-

plainant then said that when he had realized the [illegible] or liability he should stop furnishing said Lippitt with cotton; that the defendant then asked the complainant how much was then due to him or wanting to make up the amount of said debt or liability; to which the complainant replied "not much;" that he would be then paid, if he had not have purchased some new machinery for the mill, but that on account of such purchase he thought there was then a small balance still due him; that he had not brought up the accounts or examined them for some time.

That this defendant then also inquired of the complainant whether he could not make it for his interest to continue on some conditions; to which the complainant replied that he had business enough of his own; and also observed that the mill was well managed, and that he knew of no mill that had made so much profit in the same time according to the number of spindles; that a formal demand was made on this defendant for the said machinery, by the complainant's clerk, William Bailey, but the complainant never did, before or since, or in any way, intimate to this defendant, or to the knowledge of this defendant to any other person, that he, the complainant, had any interest in said machinery, except as before stated; that the complainant never said anything on the subject of the said machinery but twice, and what he then said was in answer to questions put to him by this defendant; and in both said instances (both being after the said demand on this defendant by said Bailey, as the agent of the complainant,) he, the complainant, gave this defendant to understand that he had no interest in the said machinery; that the last time any thing was said on the subject by the complainant to this defendant was in answer to defendant's inquiring of him whether he, the complainant, intended to sue this defendant for that machinery, reminding him that he had, some years before, made a demand on defendant for it, and wishing to know of him if he ever intended to commence a suit for it; to which the complainant replied that he would let defendant know, at the same time giving defendant to understand that he, the complainant, had no interest in it; that subsequently this defendant received a letter from the complainant, of which the following is a copy:

PROVIDENCE, 10th month 23d, 1840.

PELEG WILBUR.

RESPECTED FRIEND: I have consulted counsel respecting the claim I have against thee, and have made up my mind to commence a suit immediately unless there is a settlement. If thee would like to see Mr. Hazard, he will be in town on the 26th instant.

Thy friend,

SAMSON ALMY.

That the above letter was the first and the last and only instance in which the complainant ever intimated that he had any claim on this defendant, except by the demand made by said Bailey, as his agent as aforesaid.

1423.

And in answer to the third interrogatory, propounded in said bill, this defendant further answering says:

That he received, in common with others, the mortgage deed of said machinery from said Lippitt, bearing date the eighth day of December, A. D. 1835, conveying also certain real estate, and containing a general provision to secure the payment of the debts therein named, a copy of which mortgage deed is herein before stated to be hereto annexed.

That the amount thereby secured to this defendant was for money advanced by this defendant for said Lippitt, to pay a note due from said Lippitt to Joseph Manton; that said Lippitt sent his son from Jewett City, with money to pay about one third or one quarter of said note, and another note for a renewal for the balance; that this defendant endorsed said new note at Coventry, and there told said Lippitt's son that he, this defendant, was going to Providence in time to attend to it, that it would doubtless be done, and that he might return; that defendant afterwards found that the said note had not been discounted, and he, this defendant, advanced the money to pay the balance, and took up the note against said Lippitt; that said Lippitt did not then refund the money so advanced, but after the lapse of some time this defendant took a note for it, which is the debt referred to in said mortgage; and that this is the only payment this defendant made towards the said machinery, and the only interest he had in the mortgage deed of the real and personal property as aforesaid in which said machinery was included, except the two notes therein mentioned due to the Bank of Kent, which were endorsed by the Washington Company, of which said company this defendant is a member.

And this defendant further answering says, that said debt, as above stated, due him from said Lippitt, was a bona fide debt; and that he believed, and still believes, that the other debts enumerated in said mortgage, as due from said Lippitt to the persons there named, were also bona fide debts; and that the whole transaction was in good faith; and that this defendant did not know, understand, or believe that said machinery was in any way pledged or mortgaged to the complainant or to Rowland G. Hazard & Co., or their assignees, or to any other persons, or that they, or any or either of them had any interest therein or claim thereto; and that this defendant never received any other mortgage of said machinery, except with others, as hereinbefore stated.

And in answer to the fourth interrogatory propounded in said bill to this defendant, he, this defendant, further answering, says:

That the statement made by the complainant, that he had no other interest in said machinery than that stated in answer to the second interrogatory above, was never contradicted by any statement of the complainant, or by any other evidence or circumstance by which this defendant had any reason to suspect that the complainant had purchased the interest that the said assignee of the said Rowland G. Hazard & Co. had in said machinery, or that there was any sum of money due the complainant on account of said contract, or for money advanced by the complainant, and for which the said machinery was pledged.

And this defendant further answering says, that he did not know or

believe, nor had he heard or in any manner been informed, at the time or before the mortgage of said machinery to this defendant by the said Lippitt, that there was due to the complainant any money at any time, or on any account, except that stated in answer to the second interrogatory above, and that that amount was small, as stated by the complainant; and this defendant believes that that small amount, thus then due the complainant, was paid out of the profits of said mill, as the complainant did soon stop furnishing said Lippitt with cotton; that the whole transactions go to confirm the belief of this defendant, that the complainant had no interest in said machinery, at the time it was mortgaged by said Lippitt to this defendant and others, as above stated, nor at the time the aforesaid formal demand was made on this defendant for said machinery, by said Bailey, on the 25th day of November, A. D. 1836, and that he has not at this time; and that from the time the complainant stopped furnishing said Lippitt with cotton, viz., on the 11th day of September, A. D. 1832, to the time of said mortgage of said machinery, by said Lippitt to this defendant and others, on the 8th day of December, A. D. 1835, said Lippitt run and used said machinery as his own, and exercised exclusively all acts of ownership over the same; that, during that time, this defendant never heard of any demand for or claim on said machinery by the complainant or any other person. That this defendant believed that said Rowland G. Hazard & Co. and said Lippitt were on friendly terms, and knew that said Lippitt considered the complainant as his best friend, spoke of him as the man most likely to assist him in his difficulties and embarrassed situation, and desired this defendant to see the complainant on the subject, which he did. That the complainant did not then, nor at any other time, intimate to this defendant that there was any thing due the complainant, except in the manner hereinbefore stated, though they often met and conversed. That after the mortgage of said machinery, by said Lippitt, to defendant and others as aforesaid, said Rowland G. Hazard told defendant that he had (by which defendant understood Rowland G. Hazard & Co. had) a lien on the said machinery for a balance due them, and should look to defendant for rent. This defendant saw said Lippitt, and asked him if it was so, and said Lippitt told defendant that they had not.

When this defendant first saw the contract between said Rowland G. Hazard & Co. and said Lippitt, at the time before stated, viz., December 1st, A. D. 1837, defendant reminded said Lippitt of the statement he, the said Lippitt, had before made respecting said machinery not being pledged, and said Lippitt then again repeated that statement, that said machinery was not holden for any debt or claim on him; and gave the opinion of Strong, esq., a counsellor at law of Norwich, in the State of Connecticut, to that effect. And this defendant respectfully submits to this honorable court, that said contract between said Lippitt and Rowland G. Hazard & Co. never having been recorded, and this defendant having no notice of the provisions thereof except as before stated, the machinery mortgaged to this defendant and others, as aforesaid, for a good and valuable consideration, could not, in the

hands of this defendant, or said mortgagees, be held subject to the terms of said contract, or their title thereto be in any manner affected by said contract.

And to the fifth interrogatory propounded in said bill, this defendant further answering says, that he never knew, heard, or believed, that said Lippitt had broken his contract with said Rowland G. Hazard & Co., or that he had ever neglected, or refused to go on, in the execution of the same, and this defendant never heard of such a complaint before, or since the mortgage aforesaid, until the exhibition of the complainants' said bill of complaint. But defendant has heard complaints from said Lippitt, that said Rowland G. Hazard & Co. had failed to perform the said contract on their part, and of his, the said Lippitt's, embarrassment consequent thereon; that he, said Lippitt, could get but one settlement, that he did not know how the account stood, and was in great trouble in consequence of the failure of said Rowland G. Hazard & Co. to perform their said contract; that this defendant believes that said failure on the part of said Rowland G. Hazard & Co. was the cause of said Lippitt's subsequent failure, and the loss of his property; that this defendant believes that said Lippitt was well off at the time he made said contract with said Rowland G. Hazard & Co.; that he had been making money before, and that his patrimonial estate must have been considerable. That the said contract with the said Rowland G. Hazard & Co. was such, as this defendant believes, as to insure the said Lippitt a profitable business.

And this defendant further answering says, that at the period of the failure of said Rowland G. Hazard & Co., to wit, in May, A. D. 1829, the depression of manufacturing prospects, together with a general distrust and want of confidence in those engaged in manufacturing, this defendant verily believes, prevented said Lippitt from making a contract with others as favorable to him as the contract aforesaid with said Rowland G. Hazard & Co.; and this defendant has also understood and believes, that in consequence thereof said Lippitt was obliged to permit the complainant to furnish him with cotton on terms less favorable to him than those contained in said contract with Rowland G. Hazard & Co.

And to the sixth interrogatory propounded to this defendant in said bill of complaint he, this defendant, further answering says, that he, this defendant, did, on the 25th day of November, A. D. 1836, in common with others, claim to hold said machinery by virtue of a mortgage deed of the same from said Lippitt, as hereinafter set forth, and that on the first day of December, A. D. 1837, this defendant, for himself, and as attorney for a part of the other of said mortgagees, viz., Matthew G. Wilbur, Bank of Kent, Oliver C. Wilbur, Christopher H. Lippitt, William Lippitt, and Caleb Congdon, did sell and convey to Samuel C. Morgan and John W. Fanning, both of Griswold, Connecticut, all their interest in and to the said machinery and mortgage, with a warrantee of the machinery, for the amount of the consideration, by them paid, and which was the amount due to the said last named mortgagees at that time, after deducting the rent allowed by this defendant,

being seventeen hundred twenty-six dollars and twenty-five cents; and the said rent thus allowed, being one thousand and forty dollars.

That said Matthew G. Wilbur and Christopher H. Lippitt had been paid from attachments made on other personal property for the same demands that were secured by said mortgage, and that a part of this defendant's debt had been paid in the same way. That the amount received by this defendant, as consideration for his interest in said mortgage deed and machinery, when transferred to said Morgan and Fanning, was four hundred and seven dollars and fifty-four cents.

That the other mortgagees interested in said estate, and in the sale of said machinery, viz., the Jewett City Bank, Windham County Bank, and the Norwich Bank, were represented by the said Samuel C. Morgan, as their attorney at law, and this defendant had nothing to do with settling their claims.

And this defendant denies all manner of unlawful combination and confederacy wherewith he is by said bill charged; without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

PELEG WILBUR.
GREENE & POTTER,
Solicitors for Defendant.

(A.)

To all people to whom these presents shall come, greeting:

Know ye, that I, Christopher Lippitt, of Griswold, in the county of New London, and State of Connecticut, for the consideration of five thousand dollars, received to my full satisfaction, of Matthew G. Wilbur, of Richmond, in the county of Washington, and Peleg Wilbur, Oliver C. Wilbur, both of Coventry, in the county of Kent, in said State of Rhode Island, "the President, Directors, and Company of the Bank of Kent," a body corporate doing their business at said town of Coventry, William Lippitt and Caleb Congdon, both of Cranston, in the county of Providence, in said State of Rhode Island, and Christopher H. Lippitt, of said town of Griswold, in said State of Connecticut, do give, grant, bargain, sell, and confirm, unto the said Matthew G. Wilbur, Peleg Wilbur, Oliver C. Wilbur, "the President, Directors, and Company of the Bank of Kent," William Lippitt, Caleb Congdon, and Christopher H. Lippitt, their heirs, successors, and assigns forever, two certain tracts or parcels of land, situated in the village of Jewett City, in said town of Griswold. The first is situated on both sides of the Pochaug river, and is described and bounded as follows, viz., westerly, on the highway; northerly, partly on land of Thomas

L. Wilson, and partly on land occupied by Andrew Lamb; easterly, partly on land of said Wilson, and partly on land of Lucius Tyler; and southerly, on land of said Tyler; with a cotton factory, four dwelling houses, and other buildings thereon standing; being the same property formerly known as the Schoolfield estate, and formerly owned and occupied by the Griswold Manufacturing Company, and by them conveyed to me, as by the deed of John Breed and others, recorded in Griswold town records, will more fully and at large appear, and to which reference may be had; being also the same property occupied by me for some years, said property being under a mortgage for the security of the sum of six thousand dollars.

The second of said tracts is bounded and described as follows, viz., northerly and westerly, by highways; easterly, by land of John W. Fanning; and southerly, by land of John Slater, with the dwelling house in which I now live, a barn and other buildings thereon standing, containing about one acre, and is the same estate which I purchased of Jedediah Barstow, and which I have mortgaged to Elias Brewster and Samuel C. Morgan, for the security of about the sum of two thousand dollars; to which deeds, recorded on said Griswold record, reference may be had for a more particular description of the premises.

I do also hereby sell, assign, and convey, to the above named grantees, the following articles of machinery, situated in said cotton factory, on said first described tract of land, viz., six throstle frames, two mules of two hundred and sixteen spindles each, two Field's speeders, one Taunton speeder, fourteen cards, one warping machine, one dressing machine, one spooling machine, twenty looms, one turning engine, one cutting engine, two turning lathes; also, the cans, spools, bobbins, and all the tools in said factory; also, one cotton whipper and one cotton picker, situated in the picker house, on said first described premises; also, the loom beams and dresser beams in said factory.

To have and to hold the above granted and bargained premises, with the appurtenances thereof, unto them, the said grantees above named, their heirs, successors, and assigns forever, to them and their own proper use and behoof. And also, I, the said Christopher Lippitt, do, for myself, my heirs, executors and administrators, covenant with the said grantees, their heirs, successors and assigns, that at and until the ensealing of these presents, I am well seized as a good and indefeasible estate in fee simple, and have good right to bargain and sell the same in manner and form as is above written, and that the same is free from al incumbrances whatsoever, except the mortgages aforesaid. And furthermore, I, the said Christopher Lippitt, do, by these presents, bind myself and my heirs forever, to warrant and defend the above granted and bargained premises, to them, the said grantee, their heirs, successors, and assigns forever, except as aforesaid.

Always provided, and these presents are upon the express condition, that whereas I am indebted to the said Matthew G. Wilbur by my two promissory [notes,] both payable to him on demand with interest, one dated March 26th, 1837, for the sum of one hundred dollars; and the other dated September 14th, 1831, for the sum of two hundred dollars.

Whereas, also, I am indebted to said Peleg Wilbur by my promissory note payable to him or order on demand with interest, dated March 1st, A. D. 1834, for the sum of seven hundred and sixty-three dollars and fifty-nine cents. Whereas, also, I am indebted to said "President, Directors and Company of the Bank of Kent," by my two promissory notes, for the sum of six hundred and fifty dollars each, one dated October 17, A. D. 1835, and the other dated November 23d, 1825, and both endorsed by said Peleg Wilbur for the Washington Company, and each payable sixty days from date. Whereas, also, I am indebted to said Oliver C. Wilbur, by my promissory note to him for the sum of seventy-five dollars, payable to him or order on demand with interest, dated July 7th, 1827. Whereas, also, I am indebted to said Christopher H. Lippitt, by my two promissory notes, both payable to him on demand with interest, one for the sum of one hundred dollars, dated May 28th, 1834, the other for the sum of one hundred and fifty dollars, dated September 28th, 1834. Whereas, also, I am indebted to said William Lippitt, by my note dated May 28th, 1835, for two hundred dollars, payable to him or order on demand with interest; also to said Caleb Congdon, by my note dated May 29th, 1835, for two hundred dollars, payable to him or order on demand with interest thereon. Whereas, also, said Matthew G. Wilbur hath endorsed, for my accommodation and benefit, a note to Bucklin Matthewson for the sum of three hundred and twelve dollars, dated May 10th, A. D. 1834, and payable in one year from the date thereof. And whereas, also, the said Christopher H. Lippitt has executed, as principal and maker thereof, but for my benefit and accommodation, four promissory notes, each payable to my order in sixty days from date, one for the sum of three hundred dollars, dated October 7th, A. D. 1835, and payable at the Jewett City Bank; one for the sum of one hundred and fifty dollars, dated October 28th, 1835, payable at the Windham County Bank; one for the sum of two hundred and fifty dollars, dated November 17th, 1835, payable at the Norwich Bank; and one for the sum of five hundred dollars, dated December 2d, 1835, payable at said Windham County Bank.

Now, therefore, if I shall well and truly pay said several debts and notes, according to the tenor thereof, and the interest thereon, to the said Matthew G. Wilbur, Peleg Wilbur, the President, Directors and Company of the Bank of Kent, Oliver C. Wilbur, Christopher H. Lippitt, William Lippitt, and Caleb Congdon, and shall indemnify and save harmless from all loss or damage the said Christopher H. Lippitt, for his making said notes for my accommodation, and shall pay the same, and shall indemnify and save harmless said Matthew G. Wilbur and Peleg Wilbur, for their endorsements as aforesaid, then this present deed shall be void, otherwise to be and remain in full force; and the said several grantees shall be entitled to the benefit of the security aforesaid, in proportion to the respective debts.

In witness whereof I have hereunto set my hand and seal, this eighth day of December, anno domini 1835.

CHRISTOPHER LIPPITT. [SEAL.]

1446.

Signed, sealed, and delivered in presence of—The words, 1st page, 4th line, "of Richmond, in the county of Washington," "Peleg Wilbur," and 1st page, 6th line, "Caleb Congdon," and 2d page, 17th line, "payable at the Norwich Bank," interlined before signing.

JOHN A. ROCKWELL,
ERASTUS COIT.

NEW LONDON COUNTY, *ss.*

NORWICH, *December* 8, 1835.

Personally appeared Christopher Lippitt, signer and sealer of the within and foregoing deed, and acknowledged the same to be his free act and deed. Before me,

ERASTUS COIT,
Justice of the Peace.

Received for record, December 8th, 1835, and is recorded in Griswold records, 3d book of deeds, page 459, by—

DANIEL HUNTINGDON,
Town clerk.

RHODE ISLAND DISTRICT, *sc.*

PROVIDENCE, *March 11th, A. D.* 1843.

Then personally appeared Peleg Wilbur, the within named defendant, and made oath that the facts and statements contained in the foregoing answer by him signed, stated as of his own knowledge, are true, and that the matters and things therein stated, as of his information, belief, or recollection, are true, according to the best of his information, belief, and recollection.

Fees 25 cts., paid.

Before me, SAMUEL W. PECKHAM,
Commissioner of circuit court for said district

At the November term, A. D. 1843, leave was granted to amend answer, whereupon the following amended answer was filed:

Amended answer.

RHODE ISLAND DISTRICT, *sc.*

Circuit court of the United States. In equity.

SAMSON ALMY
vs.
PELEG WILBUR.

Amended answer of defendant, filed by consent of parties.

This defendant, reserving to himself all right of exception to said bill of complaint, for amended answer thereto saith, that he, this defendant, took and received the mortgage mentioned in his original answer to himself, and the other persons therein named, bearing date December the

eighth, A. D. 1835, of and upon said machinery and property therein mentioned and described, for a good and valuable consideration named in said mortgage, and that said mortgage was duly recorded in the State of Connecticut, in conformity to the laws of said State.

And this defendant further answering absolutely and unequivocally denies, that, at any time prior to the taking of said mortgage to himself and others, therein named as aforesaid, on the eighth day of December, A. D. 1835, or at the time of taking the same, he, this defendant, had any knowledge, direct or indirect, or that he, this defendant, had any information, or that he had heard of any matter or thing, which caused him to believe, or even to suspect, that the said Rowland G. Hazard & Co., or their said assignees, then had any mortgage or lien of any kind or nature whatsoever upon said machinery, or upon any part or portion thereof; or that he, this defendant, had any knowledge, information, or belief of the assignment of said alleged lien, in mortgage by the said Rowland G. Hazard & Co., or of their assignment of their interest in said contract, in said complainant's said bill of complaint mentioned, at any time prior to or at the time he, this defendant, took said mortgage on said machinery to himself and the other persons therein named, on the eighth day of December, A. D. 1835, as aforesaid.

And this defendant further answering saith, that he is advised, and believes it to be true, that by the statute law of the State of Connecticut (where said alleged mortgage or lien of said Rowland G. Hazard & Co. is alleged to have been made or created, and where said machinery was situated) a prior mortgage, in order that it should hold good and valid as against subsequent mortgages, must be recorded in said State of Connecticut, according to the laws of said State, or the mortgagee must take and keep actual possession of said mortgaged property; and this defendant further says, that at the time he took said mortgage upon said machinery to himself and the other persons therein named, bearing date the eighth day of December, A. D. 1835, as aforesaid, he, this defendant, did not then know or believe, nor does he now know or believe, that the said Rowland G. Hazard & Co. then had any mortgage or lien on said machinery, either legal or equitable, recorded in said State of Connecticut, in conformity with the laws of said State or otherwise; and this defendant further says, that at the date of the said mortgage of said machinery to him and others therein named, dated the said eighth day of December, A. D. 1835, the said Rowland G. Hazard & Co. did not have actual possession of all or any of the said machinery in said last mentioned mortgage mentioned, either by themselves or their agents; but that the actual possession of all said machinery was, at the time of the date of said last mentioned mortgage, and for a long time previous thereto, had and held by Christopher Lippitt, the mortgagor in said mortgage.

And this defendant further answering, says, that on the day of the date of said last mentioned mortgage, to wit, on the eighth day of December, A. D. 1835, he, this defendant, for himself, and as the agent and attorney of a part of the other mortgagees therein named, did take actual possession of said machinery in said mortgage mentioned and

as mortgagees, under and by virtue of said last mentioned mortgage, and not otherwise, and held and retained such possession of the same until the seventh day of March, A. D. 1837, when he, this defendant, was deprived of such possession by said Morgan and Fanning in said original answer mentioned, they then taking possession of said machinery without and against the consent of this defendant.

And this defendant further answering, says, that on the first day of December, A D. 1837, he, this defendant, for himself as mortgagee, and as the authorized agent and attorney of a part of the other persons named as mortgagees, in said mortgage, bearing date the said eighth day of December, A. D. 1835, sold and assigned for a valuable consideration all his and their interest in and to said mortgage, and all his and their interest in and to all said machinery mentioned and described therein, under and by virtue of the same, and no greater or other interest in and to all said machinery mentioned and described therein, under and by virtue of the same, and no greater or other interest and nothing more to said Morgan and Fanning.

And this defendant further answering, says, that he has been informed and believes that the said Rowland G. Hazard & Co. and their assignees utterly neglected and refused to fulfil and perform their part of said contract in said complainant's said bill of complaint mentioned, and to furnish and supply the said Christopher Lippitt with cotton, according to intent, terms, and meaning of said contract; and that the complainant himself, after the alleged transfer of assignment of said contract to him, utterly neglected and refused to fulfil and perform his part of said contract according to the terms and meaning thereof; and this defendant has been informed and believes that, in consequence of said neglect and refusal on the part of the said Rowland G. Hazard & Co. and their said assignees, to perform and fulfil their part of said contract, and also in consequence of the same neglect and refusal on the part of the said complainant, the said Christopher Lippitt lost large sums of money, and was subjected to great pecuniary damage and embarrassment; and this defendant has also been informed and believes, that if the said Rowland G. Hazard & Co., and their said assignees, and the said complainant, had fairly and faithfully fulfilled and performed their part of said contract, according to the terms and meaning thereof, the said Christopher Lippitt would have been enabled, by means of his part of the avails and proceeds of said contract, to have paid the [said] Rowland G. Hazard & Co. and their assignees, or the said complainant, the full amount of money advanced and due them by said contract, and to have had a large balance or surplus for himself besides.

And this defendant for a further plea saith, that if the said Rowland G. Hazard & Co., or their assignees, or the said complainant, ever had any cause of action or suit against this defendant for or concerning any of the matters in the aforesaid bill of complaint mentioned, which this defendant doth in no sort admit, such cause of action or suit did accrue or arise above six years before the filing of the complainant's said bill of complaint, and above six years before serving or suing out process

against this defendant to appear to and answer the same bill, the said Rowland G. [Hazard] & Co. and their said assignees were not at any time within upwards of six years before the filing of the complainant's bill, or within upwards of six years before the serving and suing out process against this defendant, to appear to and answer said bill; nor hath the complainant at any time within six years before the filing of the complainant's bill, or within upwards of six years before the serving and suing out process, been under any of the disabilities mentioned and described in either of the acts hereinafter mentioned, to wit, an act of the State of Connecticut, entitled "An act for the limitation of civil actions and of criminal prosecutions," and also an act of the said State of Rhode Island, entitled "An act for the limitation of certain personal actions."

And this defendant for a further plea saith, that he, this defendant, did not at any time within six years before the exhibiting the said bill, or serving or suing out process against this defendant, to appear to and answer the same, promise or agree to come to any account for, or to pay, or any way satisfy the said complainant, or the said Rowland G. Hazard & Co., or their said assignees, any sum or sums of money, for or by reason of any matters, transactions, or things, in the said complainants' said bill of complainant charged or alleged; all which matters and things this defendant doth aver to be true, and is ready and willing to maintain and prove the same, as this honorable court shall award, and he doth plead the same, both by the said statute of limitations of said State of Connecticut, where said contract was made, and said machinery situate, and the said statute of limitations of this State in law, to the whole of said complainants' said bill of complaint, and doth humbly demand the judgment of this honorable court whether he, this defendant, ought to be compelled to make any other or further answer to said bill.

PELEG WILBUR.

RHODE ISLAND DISTRICT, *sct.*

PROVIDENCE, *September 2d*, 1844.

Then personally appeared Peleg Wilbur, the within named defendant, and made oath, that the facts and statements made and contained in the foregoing amended answer, by him signed, stated as of his own knowledge, are true, and that the matters and things therein stated, as of his information, belief, or recollection, are true according to the best of his information, belief, and recollection.

W. R. STAPLES,
Justice of the Supreme Court of Rhode Island.

On the 31st of October, A. D. 1843, the following commission was issued to Joseph Bridgham, esq., to take testimony in New York:

UNITED STATES OF AMERICA,
Rhode Island district, sct.

The circuit court of the United States, within and for the Rhode Island district, to Joseph Bridgham, of the city and southern district of New York, esquire, greeting:

...you, that, reposing confidence in your wisdom, prudence, and ability, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed of Christopher H. Lippitt, of the said city of New York, and to take the testimony of such other witnesses as may be brought before you by either party, to be used in a certain cause in equity now pending in said court, wherein Samson Almy, of Plainfield, in the district of Connecticut, is complainant, and Peleg Wilbur, of Coventry, in the Rhode Island district, respondent.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises; and when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence; and the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid next to be holden at Providence, on the fifteenth day of November next.

In testimony whereof we have caused the seal of the said court to be hereunto affixed.

Witness the honorable Roger B. Taney, our chief justice, at Providence, this thirty-first day of October, in the year of our Lord one thousand eight hundred and forty-three.

JOHN T. PITMAN, *Clerk*.

N. B. You shall not, except by the consent of the parties in writing, permit either party to attend at the taking of the depositions, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving deposition in answer to the interrogatories annexed to this commission; and you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing; and you shall put the several interrogatories and cross interrogatories to the deponent in their order, and take the answer of the deponent to each fully and clearly.

SOUTHERN DISTRICT OF NEW YORK, *ss*.

On this eighth day of November, in the year of our Lord one thousand eight hundred and forty-three, before me, James W. Metcalf, clerk of United States circuit court, and United States commissioner, personally appeared Joseph Bridgham, and took oath that he would well and truly perform the duties of commissioner under the foregoing commission.

JAMES W. METCALF,
U. S. C. C. Clerk and Commissioner.

Under the foregoing commission, the following deposition of Christopher H. Lippitt was taken:

Direct interrogatories, on the part of the complainant, to be put to Christopher H. Lippitt, of New York.

Do you know of a contract, made between your father, Christopher Lippitt, and R. G. Hazard & Co., in 1828, for the manufacturing of cotton goods, &c., at his factory, in or near Jewett City?

Did you assist in your father's business generally, and to that portion of it which grew out of said contract?

When did you first see said contract?

What relation is Peleg Wilbur to your father?

Was he in the habit of assisting your father by loans of money, by endorsement of his paper, and by advice and information touching his business?

Did Peleg Wilbur advise your father to see R. G. Hazard and Co., for the purpose of making the contract with them?

Did R. G. Hazard call on your father, at his house in Jewett City, (for the purpose of settling the accounts under the contract, before mentioned,) about the first of December, 1835, or a few days before he executed the mortgage to Peleg Wilbur and others?

Did your father then decline attending to it?

Did said Hazard leave the village, at a late hour in the evening, or in a manner or at a time unexpected by your father?

Did your father express apprehensions of suit, in consequence of his thus leaving?

Did you, immediately after this occurrence, go to Peleg Wilbur's house, and then inform him of your father's apprehensions?

Did said Wilbur then refuse to give any further aid to your father, in the way of money, or to endorse further on new paper, or re-endorse for renewal of that which he had previously endorsed?

When the mortgage was given, did your father take an active part in the arrangement; or did he passively yield to the direction or recommendations of Peleg Wilbur, or of Peleg Wilbur and others, interested in its being made?

Were you one of the mortgagees, or one for whose benefit it was made?

Were the mortgagees informed by your father, by yourself, or by any other person, of the claim to the machinery, under the contract with R. G. Hazard & Co., or that the bills of said machinery were made to said R. G. Hazard & Co.; if yea, by whom; if not, why was this information withheld from them?

Immediately after the execution of the before mentioned mortgage by your father to P. Wilbur and others, did said Wilbur attach other property for the payment of same debts which mortgage was given to secure?

Did all the mortgagees who were present know of the contract and of the claim of R. G. Hazard & Co., or their assigns, to the machinery?

Wilbur and Isaac P. Hazard (one of the firm of R. G. Hazard and Co.) at Jewett City together, soon after the execution of the mortgage by your father to said Wilbur and others; how long was it after said mortgage; how long were they there together; what was the object of their visit; did they often meet together about the machinery?

Did Peleg Wilbur and R. G. Hazard attend the sale of the machinery by the commissioner?

Did said Wilbur and R. G. Hazard, then have much conversation about said machinery?

Did R. G. Hazard give public notice at the sale of the claim to the machinery by R. G. Hazard & Co., or their assignees?

At or about the time your father declined receiving more cotton from S. Almy, did R. G. Hazard, by letter or otherwise, urge the impropriety or injustice of his doing so, and offer, if he wished it, to furnish cotton himself, or that R. G. Hazard & Co. would do it?

Cross interrogatories,

Cross interrogatories, to be administered on the part of the defendant, to Christopher H. Lippitt, a witness to be sworn and examined on the part and behalf of the plaintiff.

First. Did you at any time, while Samson Almy was stocking your father's mill, have any conversation with said Samson Almy, in relation to the purpose, reason, or object of his furnishing stock for the mill? If so, state such conversation, and particularly what the said Samson said on that subject, and the time thereof, as near as you can recollect.

Second. Did said Samson Almy at any time state, in your presence, that he had no further interest in having the mill run for him; and do you, or do you not know, whether the said Almy at any time disclaimed any interest in having the mill and machinery run any longer for him, or on his account, and declined furnishing cotton to run said mill? State particular [ly] what you know on the subject.

Lastly. Do you know, or can you set forth, any other matter or thing which may in any wise tend to the benefit of said defendant? If so, set forth the same, and all the circumstances and particulars thereof, according to the best of your knowledge, remembrance, and belief, together with your reasons at large.

GREENE & POTTER,
Solicitors for defendant.

UNITED STATES OF AMERICA,
Southern district of New York
City, county, and State of New York, ss.

Be it remembered that, on this ninth day of November, in the year of our Lord one thousand eight hundred and forty-three, before me, Joseph Bridgham, a commissioner, duly authorized under and by virtue of the annexed commission, to take the answers to the interrogatories hereunto annexed, of Christopher H. Lippitt, of said city of New York, and to take the testimony of such other witnesses as may be brought

before me by either party, to be used in a certain cause [illegible] pending in said court, wherein Samson Almy, of Plainfield, in the County of Connecticut, is complainant, and Peleg Wilbur, of Coventry, in the Rhode Island district, is respondent, personally appeared Christopher H. Lippitt, to testify and the truth to say in the above mentioned matter. And the said Christopher H. Lippitt, being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Christopher H. Lippitt, and he did thereupon depose, testify, and say, as follows, viz:

First interrogatory. Did you know of a contract made between your father, Christopher Lippitt, and R. G. Hazard & Co., in 1828, for the manufacturing of cotton goods, &c., at his factory, in or near Jewett City?

To the first interrogatory he saith: I know there was such a contract.

Second interrogatory. Did you assist in your father's business generally, and to that portion of it which grew out of said contract?

To the second interrogatory he saith: I kept the factory store for his account, and assisted in his business, until about three years previous to my father's stopping business. During those three years, I did business on my own account, and assisted my father in his business.

Third interrogatory. When did you first see said contract?

To the third interrogatory he saith: I do not recollect.

Fourth interrogatory. What relation is Peleg Wilbur to your father?

To the fourth interrogatory he saith: He is my father's brother-in-law.

Fifth interrogatory. Was he in the habit of assisting your father by loans of money, by endorsement of his paper, and by advice and information touching his business?

To the fifth interrogatory he saith: I think the only pecuniary assistance my father received, was that for which Wilbur was secured in the mortgage made at the time my father stopped business. He could not be in the habit of receiving advice or information from Wilbur, as my father saw Wilbur but a few times during the contract.

Sixth interrogatory. Did Peleg Wilbur advise your father to see R. G. Hazard & Co., for the purpose of making the contract with them?

To the sixth interrogatory he saith: I do not know that he did.

Seventh interrogatory. Did R. G. Hazard call on your father, at his house in Jewett City, (for the purpose of settling the accounts under the contract above mentioned,) about the first of December, 1835, or a few days before he executed the mortgage to Peleg Wilbur and others?

To the seventh interrogatory he saith: I know that Mr. Hazard called on my father at his house in Jewett City, perhaps a week or ten days previous to his executing the mortgage. I do not know the object of his visit, excepting from my father, as I was not present at the interview.

Eighth interrogatory. Did your father then decline attending to it?

To the eighth interrogatory he saith: I do not know whether he did or not.

eighth interrogatory. Did said Hazard leave the village at a late hour in the evening, or in a manner or at a time unexpected by your father?

To the ninth interrogatory he saith: He did.

Tenth interrogatory. Did your father express apprehensions of suit in consequence of his thus *living*?

To the tenth interrogatory he saith: My father informed me the morning after Mr. Hazard left that he had been at the hotel to see Mr. Hazard, and that Mr. Hazard did not stay in the village that night, and that it was possible that he had gone to Norwich with the intention of bringing a suit for a balance which he claimed was due him. I immediately went to Norwich, and found that Mr. Hazard had left Norwich, and concluded that we were needlessly alarmed, and thought no more of the occurrence.

Eleventh interrogatory. Did you, immediately after this occurrence, go to Peleg Wilbur's house and inform him of your father's apprehensions?

To the eleventh interrogatory he saith: I think about a week or more elapsed before I stopped at Mr. Wilbur's house on my way to Providence, to make some arrangements for the notes then coming due, one of which, I think, was endorsed by Peleg Wilbur. I cannot say whether I informed Mr. Wilbur, or not, of our apprehensions respecting Mr. Hazard's visit.

Twelfth interrogatory. Did said Wilbur then refuse to give any further aid to your father, in the way of money, or to endorse further on new paper, or re-endorse for renewal of that which he had previously endorsed?

To the twelfth interrogatory he saith: I informed Mr. Wilbur of the amount [of] money my father needed to meet notes due in a few days, and expressed to him some doubts of my father's ability to continue his business long, even if he (Wilbur) gave him assistance at this time. Mr. Wilbur said that he did not feel willing to assist further, unless there was a prospect of his being secure; and that he would come up and see what it was best to do, as there was sufficient time before the notes were due.

Thirteenth interrogatory. When the mortgage was given, did your father take an active part in the arrangement, or did he passively yield to the direction or recommendations of Peleg Wilbur, or of Peleg Wilbur and others, interested in its being made?

To the thirteenth interrogatory he saith: He did take an active part, but said he was willing, if Peleg Wilbur and myself thought it best, to give the mortgage; he did not passively yield to the direction of Peleg Wilbur or others; my father talked about the matter as other persons would under similar circumstances.

Fourteenth interrogatory. Were you one of the mortgagees, or one for whose benefit it was made?

To the fourteenth interrogatory he saith: I was interested in the mortgage to the amount due me by note, and notes on which I was held as endorser and principal for his benefit.

Fifteenth interrogatory. Were the mortgagees informed by your

father, or yourself, or by any other person, of the claim [illegible] nery, under the contract with R. G. Hazard & Co., or that the [illegible] said machinery were made to said R. G. Hazard & Co.; if yea, by whom; if nay, why was this information withheld from them?

To the fifteenth interrogatory he saith: The mortgagees were not, to my knowledge, informed by any one of *their* being any claim to the machinery, or of anything respecting it. I do not know that there was any information to withhold from them.

Sixteenth interrogatory. Immediately after the execution of the before mentioned mortgage by your father to P. Wilbur and others, did said Wilbur attach other property for the payment of same debts said mortgage was given to secure?

To the sixteenth interrogatory he saith: He attached other property for the security of one of the debts which the mortgage was given to secure. I do not recollect what debt this was.

Seventeenth interrogatory. Did all of the mortgagees who were present know of the contract and of the claim of R. G. Hazard & Co., or their assigns, to the machinery?

To the seventeenth interrogatory he saith: I knew of the contract. I can't say whether the other mortgagees knew of it or not.

Eighteenth interrogatory. Were Peleg Wilbur and Isaac P. Hazard (one of the firm of R. G. Hazard & Co.) at Jewett City together soon after the execution of the mortgage by your father to said Wilbur and others; how long was it after said mortgage; how long were they there together; what was the object of their visit; did they often meet together about the machinery?

To the eighteenth interrogatory he saith: They were both at Jewett City. Mr. Wilbur was already there; he came for the purpose of getting the mortgage executed; Mr. Hazard came a few days after the execution of the mortgage. I don't know that Mr. Wilbur had been home at all, after the execution of the mortgage. I can't recollect how long they were there. I think Mr. Hazard staid one night; Mr. Wilbur staid at my father's house. Mr. Hazard did not; Mr. Wilbur was there attending to his claim; I don't know the object of Mr. Hazard's visit. There was nothing said to my recollection about the machinery. Mr. Wilbur did not come there to meet Mr. Hazard, respecting it.

Nineteenth interrogatory. Did Peleg Wilbur and R. G. Hazard attend the sale of the machinery by the commissioner?

To the nineteenth interrogatory he saith: Mr. Hazard and Mr. Wilbur were present, when the commissioner sold under the bankrupt act of Connecticut all my father's right, title, and interest in his property. This was the only sale.

Twentieth interrogatory. Did said Wilbur and R. G. Hazard then have much conversation about said machinery?

To the twentieth interrogatory he saith: The only conversation I recollect was at the time the sale was going on; Mr. Hazard said to Wilbur, that he would take a half with him at a certain bid.

Twenty-first interrogatory. Did R. G. Hazard give public notice at the sale of the claim to the machinery by R. G. Hazard & Co., or their assigns?

To the twenty-first interrogatory he saith: He did give notice at the time that such a claim would be made.

Twenty-second interrogatory. At or about the time your father declined receiving more cotton from S. Almy, did R. G. Hazard, by letter or otherwise, urge the impropriety or injustice of his doing so, and offer, if he wished it, to furnish cotton himself, or that R. G. Hazard & Co. would do so?

To the twenty-second interrogatory he saith: My father never declined receiving cotton from Samson Almy. He stopped receiving it by Mr. Almy's advice and consent. I have no knowledge of R. G. Hazard's having written any letter to my father or of his speaking to my father on the subject of receiving cotton from Samson Almy; neither do I know that he offered to furnish cotton himself to my father, or that R. G. Hazard & Co. would do so.

Cross interrogatories administered on the part of the defendant to Christopher H. Lippitt, the aforesaid witness, sworn and examined on the part and behalf of the plaintiff.

First cross interrogatory. Did you at any time, while Samson Almy was stocking your father's mill, have any conversation with said Samson Almy in relation to the purpose, reason, or object of his furnishing stock for the mill? If so, state such conversation, and particularly what the said Samson said on that subject, and the time thereof, as near as you can recollect.

To the first cross interrogatory he saith: I did converse with Samson Almy, at different times, while he was stocking the mill, in relation to the interest he had in doing so. He said the only interest he had in furnishing stock for the mill was to get a debt to him from R. G. Hazard & Co.; that he did not care to continue the business after the said debt was paid, and that after that it made no difference to him who stocked the mill, whether my father or any body else. I told Mr. Almy that if it would be any damage to him for my father to stop receiving stock from him, that he might still continue to furnish the mill. Mr. Almy replied that it would be no damage to him, and that my father had better stock the mill himself, as he, Mr. Almy, had got his debt, and more too. Subsequent to my father's furnishing the mill, Mr. Almy gave him a letter of recommendation to a house in New York, for the purpose of aiding him in purchasing cotton. I held conversation at different times with Mr. Almy relative to this subject, but do not recollect any time in particular.

Second cross interrogatory. Did said Samson Almy at any time state in your presence that he had no further interest in having the mill run for him, and do you *do you* not know, whether the said Almy; or at any time, disclaimed any interest in having the mill and machinery run any longer for him or on his account, and declined furnishing cotton to run said mill? State particularly what you know on the subject.

To the second cross interrogatory he saith: He did state that he had no further interest in having the mill run for him, as he had secured his debt as I stated in my answer to the previous cross interrogatory.

He said it was a matter of indifference to him whether the mill and machinery was run any longer for him or not, but that he would run it for my father's benefit, if so desired. Mr. Almy never did to my recollection decline furnishing cotton to run the mill.

Last cross interrogatory. Do you know, or can you set forth any other matter or thing, which may in any way tend to the benefit of said defendant? If so, set forth the same, and all the circumstances and particulars thereof, according to the best of your knowledge, remembrance, and belief, together with your reasons at large.

To the last cross interrogatory he saith: I know not.

C. H. LIPPITT.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this ninth day of November, A. D. 1843. Before me, JOSEPH BRIDGHAM,
Commissioner.

Disbursements.

Paid postage on commission - - -	$0 75	
Commissioner's oath - - - -	0 12½	
		$0 87½

Costs of executing commission.

Administering oath to wit., 12½ - - -	$0 12½	
Taking depositions of witness, 22 fol. at 37½ cts. per fol. - - - - - -	7 75	
2 days attendance, commissioner's fees, at $2 per diem, $4 - - - - - -	4 00	
Certificate of commissioner - - - -	1 00	
Sealing and forwarding - - - -	1 00	
		14 87½
		$15 75

UNITED STATES OF AMERICA,
Southern district of New York, ss.

I, Joseph Bridgham, a commissioner duly authorized by the circuit court of the United States for the district of Rhode Island, in the first [circuit,] under and by virtue of the annexed commission, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness resides more than one hundred miles from the place of trial of this cause. I further certify, that on the ninth day of November, in the year one thousand eight hundred and forty-three, I was attended by Christopher H. Lippitt, the witness in this cause, who was of sound mind and lawful age, and the witness was by me first carefully examined, and cautioned, and sworn to tell the truth, the whole truth, and nothing but the truth; and the answers to the interrogatories were by me reduced to writing in the presence of said witness; and from his statements, and after carefully reading the same to the witness, he sub-

[illegible] the same in my presence. I further certify, that said deposition was taken in a place separate and apart from all other persons, and that no person was present at such examination except the deponent and myself. I have retained the said deposition in my possession for the purpose of sealing up and forwarding the same with my own hand to the court for which the same was taken. I do further certify, that I am not of counsel or attorney for either of the parties in this cause, nor in any way interested in the events of the same.

In testimony whereof I have hereunto set my hand and seal, this eleventh day of November, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-eighth.

JOSEPH BRIDGHAM,
Commissioner.

The three depositions following, viz., that of Peleg Wilbur, Christopher Lippitt, and Christopher H. Lippitt, are copies of the same taken from the case of Timothy C. Kendall vs. Thomas Hazard et al., and offered in this case by the complainant, of which the defendant had notice.

J. WHIPPLE, *for Complainant,*
GREENE & POTTER, *for Defendant.*

Deposition of Christopher Lippitt, in the case T. C. Kendall vs. Samson Almy et al.

I, Christopher Lippitt, of Jewett City, in the district of Connecticut, of the age of fifty-one and upwards, being duly sworn according to law, depose and say:

Questions by Rowland G. Hazard, who appeared as agent for Thomas R. Hazard and Samson Almy.

1st question. Did you make a contract with R. G. Hazard & Company for furnishing and paying for machinery, manufacturing cotton goods, &c.; if so, at what time, and did you ever make more than one such contract with them?

Answer. I made such a contract with Rowland G. Hazard & Co. in the year, I think, of 1827. I never made any other contract with them.

2d question. After the failure of said Hazard & Co., did you confer with Low & Fenner, to get them to furnish them with cotton under said contract, and what was the result?

Answer. I did. I went with Mr. Hazard to Low & Fenner, to see if there could not an arrangement be made to supply me with cotton, and they refused to supply me on the conditions of the original contract. Then we tried to negotiate on what terms they would supply, and they proposed to me to make a deduction on the contract, and would furnish me provided I would manufacture for three and a quarter, (I was then having three and a half.) I refused to manufacture at three and a quarter cents, but still in the negotiation I did agree to manufacture for three and a quarter on condition that the other quarter of a cent should

be applied to the payment of the machinery, and there was a memorandum of an agreement written that afternoon to that effect, which they did not sign. In the course of the conversation, there was something that led me to suspect that the Low & Fenners were interested in the contract, and I asked them the question whether they were not interested in the contract of Mr. Hazard with me, and they said they had no interest in it of any description whatever, but were led to make this agreement with me, at this time, merely to assist me in furnishing my mill with cotton. The bell rang for nine o'clock in the evening before they finally refused to sign the contract, and then I went home. And after that, a few days after, I think that I received a line from Mr. Hazard, stating that, if I would come down, there would be an arrangement made to furnish my mill with stock; that he had seen Mr. Low in regard to this, and that Mr. Low would go with me to Samson Almy for the purpose of seeing Mr. Almy about furnishing me with stock. I came down, and Mr. Low went with me to Samson Almy's office. Mr. Almy was not within. Mr. Low observed that he was in a hurry and must return back, and requested that I'd see Mr. Almy. I replied that I was unacquainted with Mr. Almy. Mr. Low then described his dress and person, &c., and I met him opposite the Franklin Hotel, and made known to him my business in regard to furnishing my mill with cotton. He then asked me if he would not get himself into difficulty by doing it. I replied that I did not see why. And he said that nothing would [have] induced him to do it but the recommendation of me to him by Mr. Hazard. Then Mr. Almy agreed to furnish me with cotton, and assisted me in selecting a lot.

(The plff. objects to all that part of the deponent's answer which relates to any matter as coming from R. G. Hazard.)

3d question. How long after the failure of R. G. Hazard & Co. was the negotiation with Low and Fenner, above alluded to; how long were you engaged in said negotiation; who attended to the negotiation on the part of Low & Fenner, and who made the denial of interest, mentioned in your last answer?

Answer. It was but a few days afterwards. I should not think that it could be more than three or four days afterwards. We commenced in the afternoon soon after dinner, and were engaged in it until nine o'clock in the evening. They all seemed to be engaged in the negotiation, but Mr. C. G. Fenner appeared to take the lead. Mr. Thomas B. Fenner wrote the memorandum of the contract, and was the first who refused to sign the said memorandum, it being the contract which they were negotiating upon that afternoon. They each and all of them did refuse to sign the said memorandum, or do any thing about it. Mr. Low afterwards, as assignee of R. G. Hazard & Co., agreed to send me a lot of cotton if I would send a team down, which I accordingly did, and received a lot of cotton from the assignee of R. G. Hazard & Co.

Mr. Low and R. G. Hazard then requested that I would run the stock out that I was then working, and keep distinct that which was furnished by R. G. Hazard & Co. from that furnished by the assignee.

Mr. C. G. Fenner and Thos. B. Fenner, in the conversation had with them referred to in answer to first question, denied distinctly and positively having any interest in the contract as I understood it.

4th question. Did the said C. G. Fenner and Thomas B. Fenner assert that Low and Fenner had no interest in said original contract?

Answer. They did.

5th question. Was Charles Low present when said denials were made?

Answer. I think he was. I do not recollect of his being out of the room at any time during the negotiation.

6th question. Did Charles Low say any thing in relation to the interests of Low & Fenner in said original contract; if so, what was it?

Answer. It is my impression that Mr. Low did assert, as well as the Mr. Fenners, that he had no interest in the contract.

7th question. When Mr. Charles Low went with you to see Samson Almy, did he (Charles Low) know that the object was to get said Samson Almy to send you cotton, and did he assent to your receiving it of him to manufacture at your mill?

Answer. Yes, he did. He made no objection to it at all, and of course I concluded that it was done with his approbation.

8th question. Was or was it not found difficult, at that time, to get any person to furnish your mill with cotton, and pay the contract price for manufacturing it?

Answer. It was. I could find no one else but Mr. Almy who would undertake it.

9th question. Have you had any conversation with Low & Fenner on the subject since the one alluded to; and if so, at what time or times; and have they continued to deny, or have they ever asserted any interest in aforesaid contract between you and R. G. Hazard & Co.?

Answer. I have never had any conversation of any length with them in regard to the contract, when any thing relating to carrying on my business was with Mr. Low, being one of the assignees. Any conversation I had with Mr. Fenner afterwards, was merely about manufacturing, and how manufacturing business would go, and whether or not it was profitable. They have never asserted to me at any time that they ever had any interest in the contract with R. G. Hazard & Co.

10th question. Did Charles Low request you, at any other time than the one before alluded to, to run out the stock at the mill so as to keep it distinct; and if so, at what time?

Answer. He did at the time the assignees refused to furnish any more cotton.

11th question. Did he state from what other stock, or from whose stock, it was to be kept distinct?

Answer. He stated to keep the stock of the assignees separate from that furnished by Samson Almy.

12th question. Were you at any subsequent time requested to run out the stock and keep one lot distinct from another; and if so, at what time and by whom?

Answer. I was requested to run it out at the time R. G. Hazard &

Co. failed, at the time the assignees refused to furnish cotton; and it was requested, also, by Samson Almy to run out the stock at the time he stopped furnishing cotton on behalf of the assignees, in order to keep it distinct from the cotton he furnished me afterwards. The time I have referred to now was about a year and a half from the time he first furnished me with stock, but I can't be particular about it. I think it was.

13th question. After the time at which you run out the stock at the request of Samson Almy, as before stated, was any change made in regard to the payment for manufacturing, and what change?

Answer. There was, I believe, a change made. He then paid me the full sum, three and a half cents, agreeably to the original contract. Previous to that he paid me three and a quarter cents in cash, and the quarter of a cent was credited to me towards furnishing the machinery.

14th question. What amount did R. G. Hazard & Co. assume and pay for machinery made under the contract with you?

Answer. It amounts to somewhere between nine and ten thousand dollars.

15th question. Has Samson Almy since furnished you with any machinery; if so, what was it, and of what cost?

Answer. He has furnished me with one double speeder, for which he paid five hundred dollars, or five hundred and fifty.

16th question. Was said speeder necessary for the effective operation of the machinery before mentioned?

Answer. I considered it so.

Cross examination by R. W. Greene, esq.

Had you ever received any information, before the failure of R. G. Hazard & Co., that Low & Fenner were interested in said contract between said R. G. Hazard & Co. and you?

Answer. I did not.

Did not Low & Fenner forbid you to manufacture cotton for Samson Almy under said contract; and when?

Answer. They did. I can't state certainly when. It was some time in the year 1832, I received the annexed letters, marked B, from Mr. Low, as the assignee of R. G. Hazard & Co. I don't know whether Low & Fenner had any thing to do with it, but I received the annexed letter, as above stated.

3d question. After Mr. Almy had ceased to supply you with cotton on account of the assignees, did you understand that he supplied you with cotton on his own account under the contract, or was you misinformed on whose account said Almy continued to supply you with cotton?

Answer. I suspected that Mr. Almy furnished me with cotton on his own account, on the conditions of the original contract. I never was particularly informed upon whose account the cotton was supplied.

Question by the same. Have you stated since you have been on your direct examination that you were kept in the dark as to whose account said Almy supplied you with cotton, after he had ceased to supply you with cotton under the contract on account of the assignees?

Answer. I have stated in the way of conversation that I was kept in the dark on the subject.

Question by the same. What induced you to suspect, in your first conversation with Messrs. Low & Fenner, that they were interested in the original contract between you and R. G. Hazard & Co.?

Answer. I can't recollect in particular, but it was something which was said in the course of the negotiation.

Question by the same. Was R. G. Hazard present during that conversation?

Answer. He was.

Question by the same. Were Isaac T. Hazard, Thomas R. Hazard, R. G. Hazard, and Low & Fenner, and Thomas B. Fenner, all present during said conversation, and did they converse together separately from you during the conversation?

Answer. Yes. They were all present, and they had conversation together, separate and aside from me, two or three times in the course of the negotiations.

Question by the same. How long did the assignee of R. G. Hazard supply you with cotton before you commenced taking it of Almy, and how long did Almy supply you with cotton? State the time as near as you can recollect.

Answer. Perhaps the assignees furnished me with cotton for three or four weeks. Mr. Almy furnished me with cotton about two years and a half in all.

Direct examination resumed by R. G. Hazard.

Question. Were the five letters now produced by you to the commissioner, and marked B, received by you from Charles Low?

Answer. They were received by me from Charles Low.

The signatures to the annexed letters are admitted by the plaintiff to be genuine.

CHRISTOPHER LIPPITT.

Witness—Two days attendance,	$2 50
Thirty-six miles travel,	3 60
	$6 10
Commissioners,	3 00

Letters marked B.

PROVIDENCE, *June 27th*, 1829.

Respected friend, Christopher Lippitt: Yours of 25 is at hand, with fifteen bales sheeting. We cannot send you any more cotton.

Respectfully, yours, CHARLES LOW,
Assignee for self and T. R. Hazard.

Produced by Christopher Lippitt.

W. W. HOPPIN, *Commissioner.*

B.

PROVIDENCE, *Oct.* 26, 1832.

Mr. Christopher Lippitt, Sir: Having been notified by you that you

wish to close up the contract under which you have [illegible] and to take the machinery, you paying the deficie[illegible] of your [illegible] the profits, you are hereby authorized and requested [illegible] to receive any more cotton from Samson Almy to manufacture under said contract; and to manufacture what cotton you have on hand as soon as practicable. You are requested also to render your accounts as soon as practicable, and we will have the accounts of the profits prepared as soon as practicable, with a view to a prompt and final settlement of the whole business.

Mr. Almy was never authorized to supply you with cotton under the contract for his own account.

Respectfully, your obedient servant,

CHARLES LOW, *for self and*
T. R. Hazard, assignee for R. G. Hazard & Co.

Produced by Christopher Lippitt.

W. W. HOPPIN, *Commissioner.*

B.

PROVIDENCE, *April 2d*, 1833.

DEAR SIR: I wish you to come to this city and go with me to see Mr. R. W. Greene, so that we may find out how this business of ours and Hazard's can be settled. I suppose the Hazards are blowing you up that I owe them. I do not owe them one cent; they owe me five thousand dollars over and above what they owe us for machinery.

You appear to wish to settle this business, but the Hazards are determined never to settle if they can keep it off. I wish you to come soon. I shall be here, if nothing happens, and we will put it in a way to be settled.

I remain, yours, CHARLES LOW.

Produced by Christopher Lippitt.

W. W. HOPPIN, *Commissioner.*

B.

PROV., *6th Feb'y*, 1832.

DEAR SIR: Yours, dated four days since, is just at hand. Contents noted. With regard to the contract, I am as desirous to have it adjusted as you, and am ready to attend to it at any time you may name. It will be necessary for you to take an account of what cotton, yarn, cloth, &c., you have on hand. You stated that Mr. Hazard informed you that he had purchased the contracts of the assignees. That is not the case. I have made no disposition of it.

CHARLES LOW, *Assignee.*

Produced by Christopher Lippitt.

W. W. HOPPIN,
Commissioner.

B.

PROVIDENCE, *November* 13, 1832.

DEAR SIR: I should like to know if you are furnishing yourself with cotton and not receiving it from Mr. Almy, as you have been heretofore. As for Rowland Hazard being my agent for settling the business, he cannot produce any thing to show that I ever empowered him to act for me in any one instance. I shall call upon Mr. Almy within a few days and ask him for a settlement.

Yours, &c.

CHARLES LOW, *Assignee for R. G. Hazard & Co.*

Produced by Christopher Lippitt.

W. W. HOPPIN, *Commissioner.*

RHODE ISLAND DISTRICT, *sc.*

CLERK'S OFFICE, CIRCUIT COURT, *At Providence, May 1st*, 1845.

I certify, that the above and foregoing eleven pages contain a true copy of record of the deposition of Christopher Lippitt, in the case of T. C. Kendall vs. Thos. R. Hazard et al., disposed of November term, 1835, duly examined and compared by me,

JOHN T. PITMAN, *Clerk.*

$4,85.

Deposition of Peleg Wilbur, of Coventry, in the case T. C. Kendall vs. Thomas R. Hazard et al.

I, Peleg Wilbur, of Coventry, in the district of Rhode Island, of the age of forty-seven and upwards, and duly sworn according to law, depose and say:

Questions by R. G. Hazard, who appears as agent for Thomas R. Hazard and Samson Almy.

Question 1st. Have you known of the existence of a contract between Christopher Lippitt and R. G. Hazard & Co., for the manufacture of cotton goods, &c., &c.?

Answer. I have known something about it.

Question 2d. Did you ever hear Low & Fenner, or either of said firm, say whether they had or had not any interest in said contract?

Answer. Mr. Hazard stated to me that Messrs. Low & Fenner were interested in the machinery; that they were bound as well as he to fulfil the contract. One or both of the firm of Low & Fenner said that they were not. They intimated that they were bound for Mr. R. G. Hazard & Co., and that they were not willing to obligate themselves any further, unless some provision could be made for their security. I was at the store at different times, and there appeared to be a negotiation carried on between Messrs. R. G. Hazard & Co. and Low & Fenner, which appeared to result in an arrangement. A written contract was

then formed, in which they agreed to supply Mr. Lippitt with stock. The arrangements appeared to have been at the time satisfactory to the parties, but Messrs. Low & Fenner afterwards declined proceeding with the arrangements which had been made.

Question 3d. Were you present during the whole time of the aforesaid negotiations?

Answer. I was not. I was frequently in the presence of the parties whilst carrying on this negotiation, but was not there all the time. I now recollect that I was not present when the contract was closed; when I went into Low & Fenner's store after the arrangement was completed, they showed me the written contract which I examined, but whether the contract was finally signed by the parties or not, I cannot state.

Question 4th. During said negotiation, or at any other time, did you ever hear Low & Fenner, or either of said firm, deny or affirm that they had any interest in the original contract of Christopher Lippitt with R. G. Hazard & Co.?

Answer. I understood them to deny that they owned any part of the machinery, or were bound to perform any part of the contract.

Question 5th. Do you know whether it was or was not difficult to get any person to supply cotton to keep Mr. Lippitt's factory in operation?

Answer. I know that it was difficult at that time to obtain any contract, as the manufacturing business was very much embarrassed. I believe all who had any business in manufacturing at that time had too much of it.

Question 6th. Were you ever asked to buy the contract of Christopher Lippit with R. G. Hazard & Co., or did you know that it was for sale?

Answer. I do not recollect of talking of buying of it. I understood by Mr. Lippitt, that Hazard would like for him (Lippitt) to buy it or close it. I had no disposition to purchase myself.

Question 7th. In your answer to the second interrogatory you say that Low and Fenner intimated that they were bound for R. G. Hazard & Co. Did they say for what amount?

Answer. They did not.

Question 8th. Did they say whether the amount was a large or small one?

Answer. I do not recollect that any thing was said as to the amount.

Question 9th. During the negotiation with Lowe & Fenner to supply Christopher Lippitt with cotton, (before alluded to,) was there much said in regard to their (Low and Fenner's) having any interest in the original contract with said Lippitt?

Answer. I think there was not much said about it. I stated to Low & Fenner what Mr. Hazard stated to me in regard to their interest, and observed to them that I considered they ought to fulfil the contract with Mr. Lippitt, because I considered it a great hardship on Mr. Lippitt's part, that he should be deserted at such troublesome times. It was then that they observed that they owned no part of the machinery, and was under no obligation to fulfil any part of that contract with Mr. Lippitt.

Question 10th. Did said Low & Fenner deny having any interest whatever in said contract?

Answer. Yes.

Cross examination by T. F. Carpenter, esq., for plaintiff.

Question 1st. Were Messrs. Low & Fenner present when R. G. Hazard stated to you that they (Low & Fenner) were interested in said contract?

Answer. I am confident that they were not.

PELEG WILBUR.

Witness attendance one day,	$1 25
14 miles travel, - -	1 40
	2 65
Commissioner, - -	2 00

June term, 1835.

Opened in court 1st day.

J. T. P., *Clerk*.

RHODE ISLAND DISTRICT, *sc.*

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, May 1st, 1845.

I certify that the foregoing three pages contain a true copy of record of the deposition of Peleg Wilbur in the case, T. C. Kendall vs. Thomas R. Hazard et al., disposed of November term, 1835, duly examined and compared by me.

$1 85 JOHN T. PITMAN, *Clerk*.

Deposition of Christopher H. Lippitt, in the case of T. C. Kendall vs. Thomas R. Hazard et al.

I, Christopher H. Lippitt, of Jewett City, in the district of Connecticut, of the age of twenty-four years, duly sworn according to law, depose and say:

Question by Rowland G. Hazard, agent for Thomas R. Hazard and Samson Almy.

Question 1st. Are you a son of Christopher Lippitt, manufacturer, of Jewett City, Connecticut, and have you been engaged in his business since the early part of the year 1829?

Answer. I am the son of the said Christopher Lippitt, and have been engaged in his business as a clerk ever since I was capable of transacting business.

Question 2d. Have you knowledge of a contract made by him with R. G. Hazard & Co., for manufacturing cotton goods, &c., &c.?

Answer. Yes, I have.

3d question. Did you, soon after the failure of R. G. Hazard & Co., bring goods made under said contract to Providence; if so, what course did you pursue in regard to them?

Answer. I brought the goods down and carried them to Low &

Fenner's store, and Mr. Low paid for the manufacturing of said goods to me for my father.

4th question. Did he ever refuse to pay you for the manufacturing of any lot of goods which you brought in.

Answer. Yes, he refused to pay for one lot which I brought in.

5th question. What conversation passed between you in regard to said lot of goods?

Answer. I told Mr. Low that we wanted the money for the goods, that we had a note to pay, and must have the money or leave the goods with the person we owed to pay the debt. Mr. Low then replied, that he could not or should not pay the money, and told me that he did not care what became of the goods. I then ordered the teamer to drive the goods to a store on South Water street.

6th question. Was C. G. Fenner present when the above conversation took place?

Answer: I should think he was. I believe he was present, but don't recollect exactly about it.

7th question. How often have you been in the habit of visiting Providence since the early part of 1829?

Answer. I have been in Providence frequently since that time, perhaps on an average once in a month.

8th question. Have you frequently, at such times, seen and conversed with Low and Fenner, and in relation to their having any interest in the contract made by your father with R. G. Hazard & Co.? If so, state what was said in those conversations.

Answer. I have had frequent conversations with them when I was down with the goods, and at other times. Mr. Low and Mr. Fenner always denied that they had any interest in the contract until some time in the year 1832, previous to my father's taking the business into his own hands. I had a conversation with C. G. Fenner at the Manufacturer's Hotel, in which conversation Mr. Fenner said that he was interested in the contract. I remarked to him that he had always denied it before. I think his reply was, that he had recently purchased in. There was not much more said at that time.

9th question. At said last mentioned conversation, was any thing said on the subject of Low and Fenner's having talked of supplying your father with cotton immediately after the failure of R. G. Hazard, and what?

Answer. I don't recollect that there was.

10th question. Was any thing said on that subject at any other of the conversations you had with them?

Answer. I recollect in a conversation with them that Mr. Low and Mr. Fenner said that at the time they talked of making the contract with my father, soon after the failure of R. G. Hazard & Co., that they proposed or were going to make the contract merely to accommodate my father, and to give him business. They also said at that time that they had no interest in the old contract with R. G. Hazard & Co.

11th question. In your conversation with said Low and Fenner, did you often or ever state to them that R. G. Hazard & Co., or either of

said firm, said they were interested in the original contract with your father, and what [illegible] on that subject?

Answer. I had a conversation with Low and Fenner soon after they refused to furnish cotton. I told them that Isaac Hazard said that they were interested in the contract, and they denied having any interest in it. Mr. Low said that he merely acted as one of the assignees. I don't recollect that I ever stated to them at any other time; I might have stated it to them at other times, because I frequently conversed with them on this subject.

12th question. Did said Low or said Fenner ever find fault with R. G. Hazard & Co. for asserting that they (Low and Fenner) were interested in said contract?

Answer. Yes; they blamed them for it, and appeared to be very much offended because they asserted it.

13th question. Did they ever accuse them of speaking falsely in making said assertion?

Answer. Yes; they said that it was no such thing; that they were not interested.

14th question. Did Low and Fenner say any thing about the indebtedness of R. G. Hazard & Co. to them?

Answer. Yes; they said they had accepted drafts for the accommodation of R. G. Hazard & Co., who were owing them considerable for acceptances.

15th question. Did they say any thing in relation to their having to pay said acceptances?

Answer. They said that they had to pay them, and that R. G. Hazard & Co. were owing them for the acceptances.

16th question. Did they state the amount of said acceptances, or whether it was large or small?

Answer. I heard them say that R. G. Hazard & Company were owing them four or five thousand dollars.

17th question. Do you recollect at what time they made this assertion?

Answer. I cannot state the time; they told me this in the course of conversation at different times.

Cross examination by Thomas F. Carpenter, esq., plaintiff's attorney.

1st question. Has R. G. Hazard had conversation with you relative to this case, since you came to Providence to give your deposition, and when did you come to give your deposition?

Answer. I came yesterday, and saw Mr. Hazard last evening, and I told him in a few words what I knew about this case. I saw him again this morning, and had some conversation with him, when I told him what I knew, and pretty much the same which I have stated in my deposition this morning.

2d question by same. Did said Hazard request you last evening to see him on the subject again this morning?

Answer. The time that I saw him last evening was just as the bell

was ringing for tea, and he said to me that he would [illegible] me again that evening; he called, and I was out, and he left word [illegible] the barkeeper that he would see me in the morning. He saw me this morning, and had the conversation above stated.

3d question. Did said Hazard in the above converration make any statements to you about the facts of the case, and ask you if you did not recollect agreeable to his statement? Please state particularly what said Hazard said to you.

Answer. Mr. Hazard asked me if I would state to him what I knew about this case, and I told him what I knew about it.

CHRISTOPHER H. LIPPITT.

Witness attendance 1 day - - -	$1 25
36 miles travel - - - -	3 60
	4 85
Commissioner - - - -	2 00

June term, 1835, opened in court 1st day.

J. T. P., *Clerk.*

RHODE ISLAND DISTRICT, *sct.*

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, May 20th, 1845.

I certify that the above and foregoing five pages contain a true copy of record of the deposition of Christopher H. Lippitt, in the case of T. C. Kendall vs. Thomas R. Hazard et al., disposed of November term, 1835, duly examined and compared by me.

Copy and cert. 425

JOHN T. PITMAN,
Clerk C. Court.

1454.

The subjoined exhibits the account of the [illegible] Factory with with the assignees of R. G. Hazard & Co., [illegible] to his purchase in account (B,) and is now put in as part of the same, with notice to

Christopher Lippitt's Machinery,

To balance to new account $858 56

Almy at the time he stocked said factory, under the contract of the same March, 1830, and was believed by consent to be included defendant, but subject to objections.

JOHN WHIPPLE,
For Complainant.
GREENE & POTTER,
For Defendant.

account with Samson Almy.

1829.									
8th month,	14th	By ¼ ct. per yard on	6447½	yards cloth					$16 12
	28th	" ¼ ct. " "	4427	" sheeting					11 07
9th "	15th	" ¼ ct. " "	6420	" "					16 05
10th "	8th	" ¼ ct. " "	10367	" "					25 92
	17th	" ¼ ct. " "	4492½	" "					11 23
11th "	2d	" ¼ ct. " "	6675½	" "					16 69
	24th	" ¼ ct. " "	8424¾	" "					21 06
12th "	23d	" ¼ ct. " "	1036¼	" "					25 92
1830.									
1st month,	7th	" ¼ ct. " "	6348	" "					15 87
	21st	" ¼ ct. " "	6302½	" "					15 75
2d "	11th	" ¼ ct. " "	6339½	" "					15 83
	20th	" ¼ ct. " "	6371½	" "					15 93
3d "	10th	" ¼ ct. " "	8007½	" "					20 02
	27th	" ¼ ct. " "	8032¼	" "					20 08
4th "	28th	" ¼ ct. " "	3162¼	" "					7 90
9th "	4th	" ¼ ct. " "	1417	" "			3 54		
		" One-half nett profits of Griswold Factory, bearing interest from 9th month 30th, 1830					599 58		
									603 12
									858 56
		By balance brought down							858 56

Dr. *Griswold Factory in* [illegible]

1829.			
7th month, 7th	To 10 bales upland cotton, bought of Waterman & Arnold, 3325 lbs., 10¾ cts., on 6 months credit		$357 44
21st	To 18 bales upland cotton, bought of Waterman & Arnold, 5756 lbs., 10¾ cts., for 6 months' credit		611 56
8th month, 14th	To 3½ cents per yard on 6447½ yards for manufacturing		225 64
28th	To 3½ cts. per yard on 4427 yards, for manufacturing		154 95
9th month, 7th	To 15 bales upland cotton bought of Stephen Waterman, 4705 lbs., 11¼ cts., on 6 months' credit		529 31
15th	To 3½ cents per yard on 6420 yards, for manufacturing		224 70
15th	To Providence Dying, Bleaching, and Callendering Co's bill, bleaching and callendering.		97 53
26th	To 22 bales of cotton bought of Peter Remson & Co., New York, 8808 lbs., 10 cts., 4 mo. credit, from 14th	880 80	
	To freight, drayage, and wharfage on same..	14 30	
			895 10
28th	To Providence Dying, Bleaching, and Callendering Co's bill, bleaching and callendering.		65 50
10th month, 8th	To 3½ cts. per yard on 10367 yards, for manufacturing		362 85
9th	To Providence D. B. and C. Co's bill of this date, for bleaching, &c.		20 86
17th	To 3½ cts. per yard on 4492½ yards for manufacturing		157 24
24th	To Providence D. B. & C. Co's bill of 13th inst. for callendering, &c.	94 09	
	To " " " " this day	11 09	
			105 18
11th month, 2d	To manufacturing 6675½ yards sheeting, 3½ cts. the yard, per C. Lippitt's invo. of 31st.		233 64
5th	To Prov. D. B. and C. C's bill calg. goods, &c.		16 47
24th	To 3½ cts. on 8424½ yards, for manuf'g.		294 86
12th month, 11th	To 29 bales of upland cotton, bought of G. R. Arnold, 9320 lbs., 10¾ cts., 6 months' credit	1,001 90	
	To 4 bales Pensacola cotton, bought of William Blodget, 1232 lbs., 10 cts., 4 months, from 27th ulto.	123 20	
			1,125 10
23d	To manuf'g 10366½ yards sheetings, 3½		362 82
1830.			
1st month, 7th	To do. 6348 yds. sh'tings 3½, and drayage 33		222 51
21st	To do. 6302½ yards sh'ting, 3½		220 57
2d month, 11th	To do. 6332½ yards 4-4 sh'tings, 3½, as per invoice of 3d instant		221 63
20th	To do. 6371½ yds. sheetings, 3½, rec'd this day		223 01
	To Providence D. B. and C. Co's bill of bleaching and cal'g, dated 19th		126 25
3d month, 10th	To manuf'g 8007½ yds. 4-4 sheetings, 3½ per invo. of 8th inst.		280 27
" "	To Prov. D. B. and C. Co's bill of bleaching.		91 31
4th " 27th	To manuf'g 8032½ yds. 4-4 sheeting 3½		281 13
22d	To Providence D. B. and C. Co's bill bleaching		47 20
28th	To manuf'g 3162½ yds. 4-4 sheetings, 3½		110 67

Almy, Int: ... month, 30th, 1830. Cr.

1829.			
9th month, 28th	By cash received of Providence Bank, for draft on C. W. & Co., for 250 interest &c., 6.46		$243 54
10th month, 18th	By cash received of Providence Bank for draft on Brown & L., for 350 interest, &c., 8.11		341 89
23d	By draft on Mott, Wood & Merritt, for 28434 " " Brown & Lewis, " 59822 to pay Remson & Co's bill cotton of 9th month, 14th		882 56
27th	By cash received for draft on C. Wyman & Co., discount Prov. Bank	700 00	
	Interest and discount off	17 45	
			683 55
12th month, 11th	By drayage charged 9th month, 26th, charged C. Lippitt this day		66
15th	By cash received of Prov. Bank for draft on C. W. & Co., for 500, interest 10.33 off		489 67
1830.			
1st month, 9th	By nett discount of draft on Brown & Lewis, 500 interest 10.25 off		489 75
	By cash of Brown & Lewis, amo. of their invoice of starch, bought for S. Almy's private acc't (on interest from 12th month, 7th)		421 70
12th	By cash nett proceeds draft on C. Wyman & Co.	678 53	
	By cash for 1 piece 30 yards sheeting 8¼	2 55	
			681 08
2d month, 22d	By cash for proceeds draft on M. Armsby, Boston, 550, 11.28 interest		538 72
23d	By Job L. Pratt's note for 1 bale brown sheetings No. 211. Invoice 2d inst. 396¼ yards, 9 cents, 4 months		35 66
26th	By nett proceeds, draft on F. Skinner & Co., for 600, interest 12.30		587 70
3d month, 10th	By nett proceeds, draft on Brown & Lewis, for 800, interest 24.93		775 07
4th month, 29th	By nett proceeds, draft on C. W. & Co., for 500, interest 10.25		489 75
5th month, 21st	By nett proceeds, draft on B. & Lewis, for 479.49, interest 10.23		269 26
6th month, 5th	By draft on F. Skinner, & Co, Boston, at sight balance account		122 24
12th	By draft on Jenkins, Merritt & Co. for 600, interest off 12.30		587 70
	By balance from Armsby & Wetherell	810 92	
	Deduct for guarantee on sales made by Armsby & Wetherell per agreement, say 1496.55, at 2½ per ct., balance on interest from 1st inst.	37 41	
			773 51
14th	By draft at sight on Jenkins, Merritt & Co. for balance account		72 50
17th	By balance of Cobb, Wyman & Co., on interest from 1st instant		107 39

[Dr. *Griswold Fac[illegible] Account cont[illegible]*

1830.					
9th month	4th	To sundries credited C. Lippitt, this day....		$66 17	
		To ¼ per yard on 1417 yards credited C. Lippitt machinery.....		3 54	
		To cash paid postage letters, &c.....		4 76	
		To sundry drayages charged C. L., but now credited to him.....		2 25	
		To nett profits of the concern, ½ to Samson Almy	599 57		
		To " " " ½ to credit C. Lippitt, machinery.....	599 58		
				1,199 15	
					1,275 87
					$8,941 17

Samson Almy — Continued. CR.]

1830.			
9th month, 4th	By balance of interest	$24 62	
	By yarn and sheeting, charged C. Lippitt ...	122 65	
			$147 27
			8,941 17

UNITED STATES OF AMERICA,
Rhode Island district, sc.

The circuit court of the United States, within and for the Rhode Island district, to Samuel W. Peckham, of Providence, in said district, esquire, greeting:

Know ye, that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the depositions of such witnesses as may be brought before you, by either party, upon oral interrogatories, to be used in a certain cause now pending in said court, wherein Samson Almy, of Plainfield, in the Connecticut district, is complainant, and Peleg Wilbur, of Coventry, in the Rhode Island district, is respondent.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises; and when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence; and the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid next to be holden at Providence, on the fifteenth day of November instant.

In testimony whereof we have caused the seal of the said court to be hereunto affixed.

Witness the honorable Roger B. Taney, our chief justice, at Providence, this second day of November, in the year of our Lord one thousand eight hundred and forty-four.

JOHN T. PITMAN, *Clerk.*

RHODE ISLAND DISTRICT, *sct.*

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, Nov. 2d, 1844.

Then personally appeared the above named S. W. Peckham, and made oath that he would faithfully and impartially, discharge the duties reposed in him by the foregoing commission, according to the best of his skill and understanding.

JOHN T. PITMAN, *Clerk.*

To the honorable circuit court of the United States, within and for the Rhode Island district.

Respectfully reports Samuel W. Peckam, the commissioner named in the within commission, that after having been duly sworn to the faithful and impartial discharge of his duties under the same, he met the parties, on several days by them agreed upon, and took the depositions herewith returned, of Christopher Lippitt on behalf of the respondent, and of Thomas Phillips, John H. Cross, Samuel Bailey, Charles H. Dabney, and Rowland G. Hazard, on behalf of the com-

plainant. [illegible] nents, before giving their deposition, were severally sworn or affirmed to testify the truth, the whole truth, or nothing but the truth; and said depositions were by me reduced to writing in the presence of the deponents, and by them subscribed in my presence. Both parties were present, either in person or by attorney or agent, during the whole time of taking said deposition.

SAM'L W. PECKHAM, *Commissioner.*

Fees, $30.

Complainant's depositions.

I, Thomas Phillips, of Canterbury, in the State of Connecticut, on oath, do testify and say:

Questions by Rowland G. Hazard for the complainant.

1. What is your place of residence and occupation?

Answer. I reside in Canterbury, Connecticut, and my occupation is that of carding.

2. Were you engaged in the factory of Christopher Lippitt, at or near Jewett City; and if so, during what time?

Answer. I was. I worked for him from the time he first started his mill till his failure, with the exception of two years. I can't recollect those two years.

3. Were you there in his mill at the time of his failure?

Answer. I was not.

4. Were you employed there soon after?

Answer. I was employed there, I should think, six months after his failure; commencing I mean six months after.

5. What was the value of the machinery in his mill at the time of his failure?

Answer. I could not tell you.

6. What proportion did it bear to its original value?

Answer. I should think two-thirds.

7. Had it or not been kept in good repair, and well taken care of?

Answer. It had.

8. How long was it continued in operation after the failure of Christopher Lippitt?

Answer. It was burnt up last February. It was in operation from the time of his failure till it was burnt up.

9. What quality of work did it do just previous to its being burnt up?

Answer. I should think about a common quality of goods. We were making, at the time the mill was burnt, about No. 17 yarn; we were making yard wide sheeting.

10. Up to that time, did or did not the machinery continue to work well?

Answer. A part of the machinery was considerably out of repair, and a part was in good running order.

11. After the failure of Christopher Lippitt, was or was not the repair of the machinery neglected?

Answer. It was.

12. Who run it afterwards; was it rented or otherwise?

Answer. It was rented and run by Joshua Fenner and Asa Fenner.

13. What portion of the time after the failure of Christopher Lippitt till the time it was burnt were you employed in the mill?

(All questions and statements with regard to the value of the machinery after the failure of Christopher Lippitt are objected to by defendants.)

Answer. I should think the whole of the time that the mill was in operation, with the exception of one year.

14. Were the two years you were absent when Christopher Lippitt run it in the early or latter part of the time that he run it, or middle?

Answer. I should think it was the latter part.

15. Did you ever know of any hindrance or damage occasioned by running out the stock in the mill by Christopher Lippitt?

Answer. Not to my recollection.

16. Are there many manufacturing establishments in that vicinity?

Answer. There are three within three miles.

17. How far is it from Jewett City to Almyville?

Answer. I should think from 9 to 10 miles. I do not know positive.

18. What would have been the cost of removing the machinery 8 or 10 miles, and putting it in operation?

(Three last questions objected to by defendant.)

Answer. I should think 100 dollars.

Cross examination.

Questions by Wm. H. Potter, esq., counsel for respondent.

1st. What was the date of said Lippitt's failure?

Answer. I do not know.

2d. *Was* you or not employed in said mill at any time within eighteen months previous to Lippitt's failure?

Answer. I was.

3d. Were not the mules in use in said mill while Lippitt run it at the time you last saw them before his failure a good deal worn and depreciated in value, in consequence of other mules having come into use of larger size, and more profitable to use?

Answer. I should think they were as much worn as mules generally are that are run that length of time, not more. I should think they were rather depreciated in value, in consequence of larger mules coming into use.

4. Were the field-speeders in use at the time you were last there, previous to Lippitt's failure, or not?

Answer. They were not.

5. What was done with them?

Answer. Part of them were worked up; part of them were put into a railway; part of them remains in the two-story house on the Lippitt & Fanning establishment. I know not what has become of the remainder.

6. What was the value of said speeders, or of the said remaining portion of them, at the time said Lippitt failed?

Answer. I do not know; I am not competent to make any estimate on it; I never bought machinery.

7. Who did you work for in said mill after said Lippitt's failure?

Answer. I think it was for Major Lippitt; I believe he continued to run on after his failure.

8. How long did [you] work for said Lippitt in said mill after his failure?

Answer. I do not know.

THOMAS PHILLIPS.

Witness fees 1 day - - - -	1 25
30 miles travel - - - -	3 00
	$4 25

Subscribed and sworn to this 9th of November, 1844, before me,

SAM'L W. PECKHAM,
Commissioner.

I, John H. Cross, of Westerly, in the county of Washington, and State of Rhode Island, and on oath, do testify and say, in answer to the following interrogatories:

Questions by Rowland G. Hazard, for plaintiff.

1. Did you take the deposition of Christopher Lippitt, which is annexed to a deposition taken before the commissioner in this case, now shown you, marked L; and were his answers correctly put down?

Answer. I did take that deposition, and the answers were correctly put down; at the commencement of the deposition it was suggested whether he should go on and make a general statement and give the whole history; and, if I recollect right, I suggested that it would not be worth while to go on and give an account of all the transactions between him and Mr. Hazard, but that he could put such questions as he wished, and the answers to those questions could be put down as they were given; I would not say that his answer to every question put by Mr. Hazard was put down, as it was not considered relevant by Mr. Hazard to the case; whatever answers were thought necessary to be put down, were put down fully and as nearly as possible in the words of Mr. Lippitt.

2. Did or did not Mr. Lippitt read the deposition over after it was finished and before he signed it?

Answer. I would not say that he read it over himself at that time, but I am confident that I read it to him, and he expressed himself satisfied with it, and signed it.

3. Did he, at any time, make any protest against it, and say that the answers were put down wrong?

Answer. Not in relation to any thing that was put down in the deposition that I heard; I presume that if there had been any thing, I

should have heard it; he called upon me the next [illegible] I think, and requested liberty to make an explanation, which I put down at the end of the deposition; I went up street after that, and showed him the deposition with the explanation, and he said it was perfectly satisfactory; this was the same day or day after; I felt anxious that it should be all done to his satisfaction, because he intimated that there had been a good deal of difficulty about the matter.

4. Did you read it over to him when you carried it to him the second time?

Answer. I handed him the deposition, and he took it and looked at it, and expressed himself satisfied; but whether he read it I can't say, but my impression is that either he or I read it; I am as confident of it as I can be of any thing that happened so long ago.

5. Did Christopher Lippitt see the deposition after that, while it was in your possession?

Answer. He and his son called at my house, I think, on Sunday, and his son asked me if I had the deposition of his father taken before me, and said he wanted to see it, as he was counsel in that case; I showed him (the son) the deposition, and he expressed some surprise that it should be taken without giving the adverse party notice; I should think the old man did not have the deposition in his hands while at my house at this time; his son read it over carefully, and said he should like to have a copy of it, and I gave him a copy of it; Christopher Lippitt was present while his son was reading it; one was sitting at one end of the table and the other at the other.

(The preceding answer was objected to by defendant's counsel.)

6. When the answer to a question was put down at all, was it or not put down to the satisfaction of the witness in full; and was he or not informed of his right to have any thing put down that he wished?

Answer. I answer to the first part of the question, that it was put down to his satisfaction, apparently, at least he expressed himself so at the time; he was informed of his right to have any thing put down that he wished.

7. Did he bring the part of the deposition in his own handwriting, annexed by wafer, when he came to give the deposition; or did he make it out subsequently?

Answer. If I recollect right, he brought that statement with him when he came to give the deposition, and it was annexed at his request.

Cross examination.—Questions by Wm. H. Potter, esq., for deft.

1. In your answer to the first interrogatory, you state that you would not say that Mr. Lippitt's answer to every question put by Mr. Hazard was put down, as it was not considered relevant by Mr. Hazard to the case; Mr. Hazard then did put questions to Mr. Lippitt which *was* answered by Mr. Lippitt, and which, after being answered, were not put down, either question or answer, because Mr. Hazard did not think them relevant to the case, was *in* not so?

Answer. Yes, I should think it was.

2. Who was present at the time of the taking of this (so called) deposition?

Ans. Mr. Hazard, Mr. Lippitt, and myself; my family might possibly have passed through the room, as it was at my house; I don't recollect that they did.

3. *Was* you requested by any person except Rowland G. Hazard to take said deposition?

Ans. I was not.

4. Did you give any notice to Peleg Wilbur, his counsel, or any other person whatever, of the time and place of taking the same?

Ans. I did not.

5. Did not Mr. Lippitt, at the time of taking said (so called) deposition, make other statements than those put down, which were explanatory of the transactions, and of the questions asked him, and which were not put down in the deposition?

Ans. I don't know but that he made statements which he deemed explanatory, but he made no statements which he requested to be put down, or which he said he deemed explanatory, but what was put down. While I was writing down the questions, he and Mr. Hazard were talking together, and it is impossible for me to say what they said to each other, it is so long ago, and I did not deem it of importance at the time.

Direct examination resumed.

8. Did you, while the deposition was taken, read each answer to him as it was put down?

Ans. I think I did. I invariably adopt that course.

JOHN H. CROSS.

Subscribed and sworn to, this 25th April, A. D. 1845, before me,

SAM'L. W. PECKHAM,
Commissioner.

Witness fees:

1 day,	1 25
43 miles travel,	4 30
	$5 55

I, Samuel Bailey, of the city and county of Providence, in the State of Rhode Island, on oath, do testify and say:

Questioned by R. G. Hazard for complainant.

1. Did you or not, make a demand of Peleg Wilbur for machinery? If so, state for whom, at what time, and what answer he made.

Ans. Yes, I did, for Mr Samson Almy; I don't recollect the time exactly, about 1836, I should think; he refused to give it up.

2. Did he say any thing further?

Ans. He said he knew what the demand was made for, to bring an action against him for the machinery; he admitted he had it.

3. Who was present when you made the demand?

Ans. Mr. Lippitt's son was there, and my impression is, that the old gentleman himself was there; I know his son was present.

4. How long have you known Mr. Peleg Wilbur?

Ans. I have been acquainted with him since 1832, I believe it was.

5. What is his character as a business man, as to ability?

Ans. Well, I should think he was a very good business man, so far as I am capable of judging.

6. Can you state his general characteristics in business more particularly?

Ans. Well, I should think he was a very shrewd business man. I don't know of many men that are qualified to do business better than Mr. Wilbur, with success; he is as good a business man as I am acquainted with; I don't know that I am acquainted with any man, in whose hands I would be more willing to put difficult business, than in Mr. Wilbur's, and I am acquainted with a good many business men.

7. Is he cautious or not?

Ans. I should judge, from what I have seen of him, that he was a very cautious man indeed.

8. By what authority did you make the demand for the machinery?

Ans. By a power of attorney from Mr. Almy.

Cross examination, questions by Wm. H. Potter, esq., for defendant.

1. At the time you made said demand, did not Mr. Wilbur state that he himself claimed the possession of the machinery spoken of, but that other persons had the actual possession of it, or words to that effect?

Ans. Well, I don't recollect any thing about it.

SAMUEL BAILEY.

Subscribed and sworn 2d May, 1845.

SAMUEL W. PECKHAM,

Witness fee, one day, $1 25. *Commissioner.*

I, Charles H. Dabney, of the city and county of Providence, in the State of Rhode Island, on oath do testify and say.

Questions by R. G. Hazard for complainant.

1. Were you Secretary of the Washington Insurance Company in this city?

Ans. Yes.

2. Will you state what insurance was effected by Christopher Lippitt, in said office, upon the Griswold factory and machinery therein, and for whose *amount*.

Ans. I find by the books that there was a policy made on the 30th of September, 1828, No. 663, by which 1,500 dollars were insured to Christopher Lippitt on the factory building and fixtures, and 6,000 dollars on machinery therein, for account of R. G. Hazard & Co. It appears from the books that that insurance was based on the application of Christopher Lippitt, of the same date and same number. Before that policy expired, I went into the office, but of course I can't speak from recollection, it is so long ago; I can only speak from the record; on the 30th of September, 1829, that company insured by policy, No. 814, 1,500 dollars on same factory building and fixtures, for

Christopher Lippitt, and $5,000 on the machinery, for account of the assignees of R. G. Hazard & Co., based on Christopher Lippitt's application, of the same date and same number. On the first of October, 1830, that company, by their policy 1007, insured $6,500 on said factory building, fixtures, and machinery, all for account of Christopher Lippitt; that policy, 1007, in the following year was renewed, from 30th September, 1831, to 30th September, 1832, for the same amount, 6,500 dollars, for Christopher Lippitt; it was renewed from year to year in the same form, the last renewal ending 30th September, 1835. On the 30th September, 1835, that company issued a new policy, No. 2,150, for $6,500 for Christopher Lippitt, based on said Lippitt's application, of the same date and same number; that policy was renewed the following year for the same amount, to said Lippitt, and expired 30th September, 1837.

2. Will you annex the original applications of Chistopher Lippitt, referred to in your deposition?

Answer. I have handed them to the commissioner to be annexed. I was absent from the office for about 6 months during the periods named. I think I left in the fall of 1830, and returned in the spring of 1831, and left the office finally about the time of the last renewal. My recollection is a mere general recollection that Christopher Lippitt and Mr. Hazard used to get insured there, and I speak only from the record.

C. H. DABNEY.

Witness fees, $1 25.

Subscribed and sworn to, this 2d May, A. D. 1845, before me,

SAM'L W. PECKHAM, *Commissioner*.

The signatures to applications of C. Lippitt are not disputed by the parties.

SAM'L W. PECKHAM, *Commissioner*.

1. Name of the premises and where situate: The premises *is* called the Griswold Cotton Factory, and *is* situated in the town of Griswold, at what is commonly called Jewett City, in the State of Connecticut.

2. Materials of the building, its size, and how finished within: The building is built of wood, three story high, with shingled roofs, and about 40 feet long and about 34 wide. The sides of the mill is plastered above the windows, and below they are ceiled with wood in one room, and not plastered over head, except the garret, which is plastered sides and over head.

3. For what purposes the several stories are occupied: The first or basement story is occupied by a press for putting up cloth, and a part is used as a repairing shop to repair machinery; the next floor is occupied for spinning and carding; the next floor is occupied for weaving, dressing, warping, &c.; the next floor, being the garret, is occupied by two mules for mule spinning and a spooler.

4. In what manner the building is warmed: With box iron stoves, with sheet iron pipes leading into the chimney, and are in good order.

5. How lighted: In the carding room part, with lamps inclosed in lanthorns, and in the other parts of the mill with open lamps.

6. Is the picker in the mill; if so, is it secured in a fire-proof room; does the beater of the picker run in lead boxes? There is no picker in the mill.

7. During what hours is the factory regularly worked? As common.

8. Is a watch kept on the premises during the night, and is there a watch-clock? No watch is kept, and no watch clock.

9. Has a particular individual charge, specially of the fires and lights? I have charge myself, and have the general superintendence of the establishment; and I reside at the premises.

10. Is the waste cotton or wool cleaned out of the building daily? I generally have the waste cotton cleaned out of the mill every night.

11. Is there a forcing pump in the factory, or is water kept standing in the several lofts, with buckets? No forcing pump, but I keep water standing in buckets on each floor, ready for use in case of accidents.

12. Is smoking or drinking spirituous liquors allowed on the premises? None by me.

13. Are building and machinery both owned by the same persons or company? The building and fixtures belong to me, and the machinery belongs to R. G. Hazard & Co.

14. Are the works immediately superintended by one of the proprietors? I myself superintend the establishment.

15. Has the building a lightning-rod? No lightning-rod at present.

16. Description and distance of the adjacent buildings, of what constructed size, height, and how occupied: There is no building situated near enough to endanger the mill, in my opinion; the nearest building being a barn, situate from sixty to seventy feet distant from the mill.

17. Are there any fire-engines, or other facilities for extinguishing fire at the factory, or in the neighborhood? None.

18. General remarks on the condition of the works, the number of spindles and cards, number of hands employed, value of building, and contents, &c., &c.: The building contains 864 spindles, 13 cards, and 18 looms, with the necessary preparation to operate them; and the sum I want insured is six thousand dollars on the machinery, for account of R. G. Hazard & Co., and fifteen hundred dollars on the building and fixtures contained therein for my account. At what premium will the Providence Washington Insurance Company take this mill-house and machinery at, against loss or damage by fire, for one year?

1½ per cent.

CHRISTOPHER LIPPITT.

Providence, Sept. 30th, 1828.

Insurance is wanted against loss or damage by fire for one year, by the subscriber, on his factory building situate at Jewett City, say 1500 dollars; also 5,000 dollars on a quantity of machinery contained therein; said machinery to be insured for account of the assignees of R. G. Hazard & Co. This being the same factory and machinery insured by the Providence Washington Insurance Company last year, for my account and R. G. Hazard & Co., on which policy No. 663 was issued; since which no material alteration has taken place; and for a more par-

1166.

the premises, reference may be had to my proposals at that time, on which policy No. 663 was made. Dated September 30th, 1828. At what premium will P. W. Ins. Co. take this risk?

1¾ per cent.

CHRISTOPHER LIPPITT.

Providence, Sept. 30th, 1829.

Policy of insurance No. 2150, on the mill, &c., of Christopher Lippitt.

Providence Washington Insurance Company.

The subscriber requests insurance against loss or damage by fire, for the term of one year, on interest in the factory described below.

The applicant is requested to answer the following questions:

1. Where is the building situated?

1. Griswold, Conn.

2. How long is it?

2. About fifty feet main building, with an addition of thirty feet, used as a machine shop.

How wide is it?

About forty feet.

4. How many stories high is it?

4. Two stories high, besides the basement.

5 How old is the building?

5. I do not know; part of it is perhaps twenty years or more.

6. How are the several stories occupied, beginning with the basement story?

6. Spinning, basement; carding and dressing, 1st story; weaving, 2d story; garret by mules.

Are the walls of brick, stone, or wood?

7. Of wood.

8. How are the rooms finished; are they plastered on the sides and overhead, or ceiled with wood; is the garret plastered between the rafters, or across the rafters, or not plastered at all?

8. Ceiled and plastered on the sides; neither plastered nor ceiled over head, except the basement, which is plastered over head and on the sides. I do not know whether the garret is plastered or not.

9. Is the roof covered with slate or shingles, laid in mortar or without mortar?

9. With shingles, and without mortar.

10. Has the building a wood jet and wood trough under the eaves?

10. It has.

11. Are the floors laid in mortar?

11. They are not.

12. Are there any stationary or permanent ladders affixed to the building, and is there a scuttle in the roof; has the roof a balustrade, or any railing on it?

12. There is a scuttle in the roof—has no balustrade nor railing on it.

13. Are there any moveable ladders of sufficient [illegible] to reach the windows of each story?

13. There are.

14. Is any part of the building used as a machine shop for working wood or iron? If so, state in what part; and whether there is any furnace, forge, or stove therein.

14. One part of the building, being 30 feet long, 18 wide, and one story high, is used as a machine shop for working wood and iron; no furnace nor forge; a stove for warming the room.

15. How is the building warmed? If by stoves, state how many, which rooms they are in, and of what kind. Are the stove pipes in good order, put together with rivets, and secured from coming apart; and are they a sufficient distance from any wood to make them safe in that respect; and if wood is used, are they taken down and cleaned as often as is necessary.

15. The building is warmed by six stoves, one in each room. The first story from the basement, being partitioned, is in two rooms, one occupied for carding and the other for dressing; has a stove in each room.

16. Are there any sheet iron stoves used in the building that are not lined with fire bricks, pipe-clay, iron, or soap-stone?

16. No.

17. What fuel is used to warm the building?

17. Coal, anthracite.

18. Are the frames of the cards, looms, and spinning frames of iron or wood?

18. Of iron.

19. Are the drums and shafts of iron or wood?

19. Shafts, of iron; drums, wood.

20. Is there a porch to the building?

20. No.

21. Is there a forcing pump in the building or near it?

21. No.

22. Is there a good fire engine belonging to the factory, with sufficient hose to lead all over the building?

22. No.

23. Are there any other engines near enough to give assistance, in case of fire; if so, how near?

23. Yes, one near by; say 80 rods.

24. Is a watch kept constantly in the building? If no watch is constantly kept, state what is the arrangement respecting it.

24. No watch is constantly kept; a man goes in at 9 o'clock, to see that all is safe.

25. Is there a watch-clock in the building.

25. No.

26. Is the waste collected and removed daily?

26. Yes.

27. How is the building lighted?

27. The carding room is lighted by globe lanterns, and the other rooms by open lamps.

1167.

28. Is there a picker in the building? If so, state particularly in what part of the building, and in what manner it is secured to guard against fire, and what kind of boxes the beater runs in.

28. No.

29. Is there a lightning rod to the building?

29. Yes.

30. Is there any fire heat used in the building, other than to warm it?

30. No.

31. How many mules?

31. Two.

32. How many looms?

32. Twenty-two.

33. How many cards?

33. 14 or 15.

34. How many drawing frames?

34. Two.

35. How many throstle frames?

35. Six.

36. How many speeders?

36. Two.

37. How many dressers?

37. One.

38. How long has the machinery been running?

38. Seven or eight years.

39. During what hours is the factory worked?

39. From four in the morning to eight at night.

40. Has any particular individual charge, especially of the fires and lights?

40. The overseer of each room has the charge of the fires and lights in their respective rooms.

41. Is smoking or drinking spirituous liquors allowed on the premises?

41. No.

42. Are the building and machinery both owned by the same persons or company?

42. Yes.

43. Are there casks constantly supplied with water on each floor of the building, with buckets in each room, ready to be used to extinguish fire?

43. Casks filled with water in the carding and spinning rooms, and buckets with water, in the other rooms. Water is taken from the trench also in the carding and spinning rooms, and in the room occupied as a machine shop.

44. Are the works immediately superintended by one of the proprietors?

44. Yes.

45. Description and distance of the adjacent buildings, of what constructed, size, height, and how occupied?

45. There is a small one story building standing about 50 feet from

the factory—one part occupied for ma[r]king, sizing and baling goods. The other end farthest from the factory is used for a wood-house.

46. What is the estimated value of the factory and machinery?

46. The machinery cost, when new, about ten thousand dollars.

At what premium will the Providence Washington Insurance Company insure six thousand five hundred dollars, for account of CHRISTOPHER LIPPITT.

1½ per cent.

65.
32.30
97.30

November 2, 1842, Mr. Gilbert informs that a new wheel has been put in the mill.

Paid March 26, 1844 - - -		- $4,500
Stock not claimed - - -	- $500	
Statement per agreement - -	- 500	
		1,000
		$3,500

I, Rowland G. Hazard, of South Kingston, in the county of Washington and State of Rhode Island, on solemn affirmation, do testify and say that, during the winter of 1827 and 1828, I mentioned to Peleg Wilbur that I wished to contract for the manufacture of cotton goods. He told me he knew a manufacturer who, he thought, would like to engage. Early in March succeeding, he introduced Christopher Lippitt, his brother in law, as the person he alluded to; and after a few days' negotiation, I, as one of the firm of R. G. Hazard & Co., concluded with said Lippitt the contract, a copy of which is annexed to the complainant's bill in this case. Peleg Wilbur appeared much interested in the negotiation, and Christopher Lippitt obviously relied much on his advice and opinions. Before the contract was entirely closed, Mr. Wilbur left Providence. I think he went to Boston; and, on his return, Mr. Lippitt, having then left, he, Mr. Wilbur, called at my counting room, and inquired the result. When I requested my clerk, Mr. Joseph C. Carpenter, to show him the contract, which he did, Mr. Wilbur remarked on the terms of it, to the effect that the price was much lower than he himself received on a contract made some time previous for similar goods, but that Mr. Lippitt was to have in addition half profit, and pay no interest or rent for machinery. I don't recollect the precise term, but that was the substance of it. My impression was, that he would rather Mr. Lippitt would have obtained a contract like his own, but deeming that impracticable at that time, was well satisfied with the one he made. I recollect this the more particularly from the fact that I then considered it important that Mr. Wilbur should be satisfied with it. The business under the contract was a

of occasional conversation between Mr. Wilbur and myself, until the failure of G. Hazard & Co., in the latter part of May, 1829. In the subsequent negotiations to procure some one to carry on the business, Mr. Wilbur took an active part. I informed him of the interest of Low and Fenner, which they denied, and conferred with him as to their liability to fulfil the contract with Mr. Lippitt. I also asked him to purchase the contract and machinery. When I heard Christopher——

(The counsel for the respondent appears at this stage of the deposition, and objects to its being taken in the narrative form as above, and requires it to be taken upon question and answer; and also objects to every thing as stated above as being appearances and impressions, and to all except what he, the witness, states that he knows that said Wilbur has said or done.)

Lippitt intended to discontinue receiving cotton of S. Almy. I talked with Peleg Wilbur about it, with a view of obtaining his influence to induce Mr. Lippitt to continue, (defendant's counsel objects to this,) but he appeared in favor of the opposite course. By request of Samson Almy, (defendant objects) I went to Jewett City on the 2d of December, 1835, for the purpose of settling the accounts of the Griswold Factory with Christopher Lippitt, after having previously endeavored to get Mr. Lippitt to meet me in Providence, and do it there. (Defendant objects.) He declined doing it, and gave as a reason the sickness of some member of his family. I am pretty confident he did not mention the absence of his son as a reason. (I expected to have remained a day or two, and such absence for that evening only would not have prevented my staying to attend to it the next day.) [Defendant objects to that within brackets.] I was satisfied I could obtain no settlement with him, and the same evening left the place, walking to Norwich, recollecting that the weekly mail wagon, in which I could return home, would leave that place next morning. [On the 7th of same month, December, I left for New Orleans, and the first letter I received from my brother informed me that my sudden departure at so late an hour, from Jewett City, had alarmed Christopher Lippitt, and caused him to suspend business, and that he probably had assigned his property in consequence of it.] (Defendant objects to what is included in brackets.) [On my return in the spring, I explained the cause of my abrupt departure to Mr. Wilbur. He remarked that when Mr. Lippitt told him of it, he replied, it was just like him; I knew him once to leave my house a bitter cold morning, and walk home through the snow, or words to that effect.] (Defendant's counsel objects to all between brackets.) The first time I saw Peleg Wilbur after my return, as aforesaid, I told him he knew he had no more right to take that machinery of Chris. Lippitt, in payment of his debt, than he would have had to take Samson Almy's pocket-book, if he had left it in the keeping of Mr. Lippitt. He did not deny the charge; this was in the spring of 1836. A very short time after the demand had been made upon him by Samson Almy's attorney, for the machinery, I saw him again at the court-house in Providence, and he then told me that some other persons had, in some way, which I do not now recol-

lect, I think he described the manner, got possession of the [illegible] from Mr. Lippitt, when [I remarked to him that it was retributive justice; he, (Peleg Wilbur,) had prevailed on Christopher Lippitt to take it from Samson Almy, and give it to him, (said Wilbur,) and others had now prevailed upon him to take it from him, (meaning Wilbur,) and let them have it, and that he had probably lost the machinery, and at the same time made himself liable to Samson Almy for its value.]

I had repeated conversations with said Wilbur, in which the interest of Samson Almy, under the contract, was the prominent topic. (Defendant objects to what is inclosed in brackets above.) I met him by appointment at Jewett City, one or two days previous to the sale of C. Lippitt's interest, by the commissioners, and there conversed a good deal with him in regard to the machinery, and made him some propositions in regard to it. I gave public notice at that sale that the machinery was claimed by Samson Almy, and P. Wilbur was standing near me at the time. On the 17th or 18th of Nov., 1832, at the request of S. Almy, I went to Jewett City for the sole purpose of endeavoring to induce Mr. Christopher Lippitt to continue the business—we having previously learned that Christopher Lippitt intended to discontinue. I saw Mr. C. Lippitt, who admitted that he had no cause of complaint with Samson Almy; that he, said Almy, managed the business well, had been obliging, and always dealt in the most satisfactory manner with him. The only reason he gave for discontinuing, that I recollect, and I believe it was the only reason he gave, was, that C. Low, one of the assignees of R. G. Hazard & Co. had forbid his working more cotton for Samson Almy; that Low & Fenner claimed the right to do it, and he apprehended he might get into difficulty, and therefore wanted the business in his own hands; but at the same time expressed some disposition to consent that S. Almy might direct in regard to its management, and the purchase of cotton, and the selection of houses to make sale of the goods, and promised to keep the accounts correctly, and make a fair settlement of the business. I however notified him that S. Almy would not give his consent to his discontinuing, and that if he, (Lippitt,) required it, I, as one of the firm of R. G. Hazard & Co., or Thomas R. Hazard, one of the assignees of said firm, would give personal attention to it. I gave this notice in writing, and requested Thomas R. Hazard to do the same, which I believe he did. After the failure of R. G. Hazard & Co., I never claimed any right to supply cotton, and on this occasion merely offered to do it that Christopher Lippitt might not excuse his discontinuing on the ground of the change of the contract into other hands. The whole matter was complicated by the dispute about the interest of Low & Fenner, and apprehending difficulty in any legal proceeding, before their ownership of the machinery was settled, we were very anxious to have an amicable understanding with Mr. Lippitt for the continuance of the business. The accounts of R. G. Hazard & Co. with the Griswold mill, were made up to Feb. 1, 1829, and again to the 30th March, 1830, and statements were no doubt furnished to Christopher Lippitt at or about those times. The first was made up by estimating the probable value of the goods on hand,

placed to the credit of the factory showed a balance of the profits of the mill, [illegible] one-half of which, to go toward payment of the machinery, was $635 32 cts. Christopher Lippitt mentioned the matter of accounts to me, and stated that he might lose interest on the profits accruing. I explained to him that any statement made before the actual sale of the goods could not be relied on, and that it would be better to wait until account sales of all the goods shipped by R. G. Hazard & Co. and their assignees, should be received, when the account of that part of the business could be definitely adjusted. I understood him to assent to this. I also stated to him that the interest account should be accurately settled, so that he should not be the loser by the accounts not being made up as often as once in six months. About the 30th March, 1830, I made up the accounts, showing a balance since the previous account of February 1, 1829, of $30 51 cts. against the mill, one half of which, $15 25 cts., is charged against the $635 32 cts., previously credited to the account of the machinery. In the account of Feb. 1, 1829, the goods on hand were estimated at a higher price than was realized for them. By the books, these appear to be the only times at which the books were closed, and the balance carried to new account by R. G. Hazard & Co., or their assignees. I kept the books of the assignees, and made the entries myself. The books of R. G. Hazard & Co., were kept most of the time under my direction, by Joseph C. Carpenter, who is dead. He was aided a few weeks by his brother, James Carpenter. At the time of R. G. Hazard & Co's failure, Christopher Lippitt owed them a balance on his individual account of several hundred dollars, of which the assignees urged payment, but on his representations of the necessity of his having payment for his manufacturing, they generally did not withhold the amounts of his bills for the same, and a portion of the amount due R. G. Hazard & Co., I believe, has never yet been paid. At the *the* time he refused to deliver a lot of goods, unless the assignees would pay cash for the manufacturing, he must have been indebted to R. G. Hazard & Co's assignees more than the price of manufacturing the same. The amount of Christopher Lippitt's draft on R. G. Hazard & Co. for 400 dollars, is not charged against the profits of the mill, and it could not have been paid out of them, as the whole of his half is put to his credit on the machinery account. I saw Christopher H. Lippitt in New York, I think, in the summer of 1843, and wrote down the statement which is hereto annexed, marked A, as he then made it to me. When I had finished it, (defendant's counsel objects to paper marked A, and to its annexation to the deposition,) he took it, read it over, made the interlineations and erasures as they now appear on it, except the erasure of the words "of the claim on," in next to bottom line, and then said it was correct. In 1835 and 1836, the manufacturing business reached its maximum profits, and I considered, when I was at Jewett City in December 2, 1835, that the machinery was sufficient security for at least a large part of the amount of the purchase money, which remained unpaid, and the interest due thereon. I did not examine the machinery at that time, but had previously done so on seve-

ral occasions, and was satisfied it was well taken care of, and [illegible] good condition. I suppose it was then worth, in December, 1829, about two-thirds its original cost. The amount of notes and cost paid by R. G. Hazard & Co., was $9,567 98 cents; amount paid by Samson Almy for a speeder, not included, I believe, $550. [My understanding, at the time the contract was made with Christopher Lippitt, was that R. G. Hazard & Co. were to be the absolute owners of the machinery, (this objected to by defendant;) but that C. Lippitt had a right to become the owner of it, and to require a title to it of R. G. Hazard & Co., on performing certain conditions, and I have no doubt this was the understanding of both parties.] (As to what the witness understood, and as to all his doubts, and all included in brackets, the defendant objects.) R. G. Hazard & Co. received bills of the machinery from the makers thereof, which I suppose, and still suppose, were the original bills of it, except for about 1,600 dollars value of it, for which bills may have been previously given to Christopher Lippitt, in the first instance, and subsequently changed for others direct to R. G. Hazard & Co. R. G. Hazard & Co. paid for the same the amount as before stated. I recollect settling with Stanford Newell for both the lots of spinning, and which embrace a very large item of the amount. When I negotiated with Christopher Lippitt, in the early part of 1830, for a sale to him, he treated the matter so entirely as a bargain for the machinery only, that I reminded him of his obligation under the contract to buy it at a certain price. He argued that machinery was then low, and he would give as much for it as it was then worth. I made several attempts to sell the machinery, coupled with the contract, in 1829 and early in 1830, without success. In attempting these negotiations, I had supposed that, if a sale could be effected, even at a considerable sacrifice, that Low and Fenner would acknowledge their interest, and unite in the sale. (All suppositions of the witness are objected to by defendant.) In the winter or spring of 1830, I had some conversation with S. Almy about arranging to sell it to C. Lippitt. S. Almy was willing to aid him in managing the business, but did not seem willing to assume the payment of the amount proposed, $5,000; and I did not think C. Lippitt's pecuniary situation would warrant a sale to him on his own responsibility. I also found in the course of these negotiations, that Low and Fenner would probably persist in denying their interests, and in claiming payment of the amount of their paper, given on account of it, as if given for the accommodation of R. G. Hazard & Co., and that any sale must be embarrassed with the question about their interest. Some other circumstances made me think the interest of the assigned fund required that an immediate sale should be made of it. S. Almy, the only probable purchaser, to whom it seemed safe to sell, objected on account of apprehension of difficulty with Low and Fenner, (defendant objects to what S. Almy said;) but by promising my personal services in the subsequent management of the business, and obligating myself by some other conditions, I prevailed upon him to make the purchase. I afterwards told C. Lippitt he must regard Samson Almy as the owner, and at a subsequent time,

defendant objects to statements of the witness of what he said,) when Low and Fenner, having, with change of times changed their views of the ownership, urged C. Lippitt to receive cotton of them. I remarked to him, C. Lippitt, that S. Almy was an honest and responsible man, (he being then considered to be worth a large property, and in high credit,) and that the profits would be safe in his hands, which they might not be in the hands of Low and Fenner, (all conversation between witness and C. Lippitt, defendant objects to,) and that S. Almy had the undoubted right to the business under the contract. The first mentioned conversation, I think, was within a few weeks of the sale to Samson Almy; the last, I think, was a few months previous to his stopping taking cotton from Samson Almy. Christopher Lippitt gave notice, as provided in the original contract with him, that he would continue to manufacture, and not take the alternative of paying for the machinery in a given time.

Cross examination. Questions by William H. Potter, esq., for defendant.

1. Have you or not any interest, directly or indirectly, in the event of this suit?

Ans. None that I know of; no pecuniary interest that I know of.

2. Should the complainant prevail in this suit, do you not expect to derive therefrom, in some form or other, some valuable or pecuniary benefit, either for yourself or R. G. Hazard & Co.?

Ans. I have no such expectation.

3. Have you not consulted the counsel of the complainant frequently upon the subject of this cause, when the complainant was not present, and without the then especial request of said complainant so to do?

Ans. I have without the special request at those times; the complainant requested me to attend to it; and I considered myself obligated to do so by the terms of our understanding, at the time he bought the contract and machinery, and I have endeavored to fulfil that obligation, as far as the pressure of my own business, and absence from this State a large portion of the year for a number of consecutive years, would permit.

4. By the contract of sale then between the assignees of R. G. Hazard & Co. and S. Almy, of this contract you *was* personally under obligation to do what you could to aid him in retaining the benefits of the same, and the time and attention which you have bestowed and are now bestowing in the prosecution of this cause, is but the fulfilment of that obligation, is it not?

Ans. I have already stated that I was under such obligation, and I consider that I am now fulfilling it.

5. When you negotiated, as the agent of the assignees of R. G. Hazard & Co., with S. Almy for the purchase of this contract, and he hesitated, did you not make these promises of future assistance, which you say you are now fulfilling, as an inducement for him to purchase?

Ans. Yes.

6. Have you not attended the taking of all the testimony in this cause on behalf of the complainant, most of the time both the complain-

ant and his counsel being absent, and have you not thus far [illegible] witnesses and taken testimony as you thought best, and done the principal part of the preparation of this cause?

Answer. I don't think I have attended to all, but I think I have to most of it; and I have endeavored to give as much attention to the case as I would to one of my own.

7. How many days have you spent in consulting complainant's counsel in this cause, taking testimony, and otherwise, in prosecuting the same?

Answer. I have no idea; the matter has been talked of occasionally ever since the mortgage was given to Peleg Wilbur, or ever since some time in 1836.

8. Have you the promise, or do you in any way expect any compensation from Samson Almy for the care, time, and services which you have so long rendered in furthering his interest in this cause?

Ans. I have no such promise, nor do I expect any compensation for the time and services rendered. I considered his purchase of the contract and machinery, under the circumstances, an act of friendship extended to me when under misfortunes, and one which I am very willing to return in any way in my power, and particularly since he has encountered similar misfortunes in business.

9. In the first part of your deposition you say Peleg Wilbur appeared much interested in the negotiation between R. G. H. & Co. and C. Lippitt, what do you mean by appearances?

Ans. Well, I mean appearances; he conversed with me about it, and seemed anxious that Mr. Lippitt should get a good contract.

10. You say this negotiation lasted some days; do you mean to say that P. Wilbur was present during this time with Lippitt and yourself in said negotiation?

Ans. Not that he was present all the time, I didn't mean to say; I did not say so, I believe.

11. When, where, and how long can you swear Peleg Wilbur was present during this negotiation?

Ans. The negotiation was in the counting-room of R. G. Hazard & Co., principally, if not entirely. I think it was there that Mr. Wilbur introduced Mr. Lippitt to me. I should think I conversed with him several times, besides the conversation that took place when he introduced him; I can't recollect exactly how many. I had not previously known Mr. Lippitt. Mr. Wilbur recommended him highly as a manufacturer to take charge of the mill, and as a desirable person to make a contract with. I may not have conversed with Mr. Wilbur so often at that time. It is possible that my impressions of the conversation at that time may be blended with those that subsequently occurred.

12. In your direct examination you state, that before the contract was closed Mr. Wilbur left Providence for Boston; and on his return, Mr. Lippitt having then left, Mr. Wilbur called at your compting room and asked the result, when you requested your clerk, now deceased, to show him the contract; who also was present beside yourself, clerk, and Mr. Wilbur at this time?

Ans. I do not recollect whether there was any other person present or not.

13. When was it?

Ans. It must have been within a very few days of the date of the contract; I can't recollect how many.

14. Was it five, ten, or more, or less?

Ans. It may have been the day the contract was completed; my impression is that it was less than five days; it is possible it may not have been.

15. How long at this time was Mr. Wilbur there?

Ans. I don't recollect how long he staid then. [The contract on the principle of that with Mr. Lippitt was a new thing at the time, I think, and I recollect that I felt interested in getting Wilbur's views in regard to it, and we conversed some little time upon the reciprocal interest which such a contract gave to both parties.] (The portion of this answer in brackets is objected to by defendant.)

16. You say in your direct examination that you asked Mr. Wilbur to purchase the contract and machinery; when and where was it?

Ans. I think I asked him, at the time we were negotiating with Low & Fenner to furnish cotton for one time, which was within a few weeks of the failure of R. G. Hazard & Co.; I think I also mentioned the subject to him at other times, but don't recollect the particular occasions.

17. Did you not, at the time of the sale by the commissioners of Lippitt's interest in said contract after said Lippitt's failure, urge P. Wilbur to purchase the same several times before you gave notice that S. Almy had any interest in the same, or you forbid the sale?

Ans. I made some propositions to Peleg Wilbur, with a view of compromising the claims of Samson Almy with him, and I think suggested or proposed to him that if Mr. Lippitt's interest was sold at a low price, to purchase it jointly, and let Mr. Lippitt run it for S. Almy, as he previously had done under the contract, until said Almy's debt was paid, and after that for P. Wilbur to have it entirely. We talked a good deal about it, and I think I put propositions in several different forms in regard to it, none of which were carried into effect, and I do not think he acceded to any of them. The proposals were made supposing it would be the cheapest mode of extricating the property, and I felt anxious and did urge Mr. Wilbur to adopt some of the plans I proposed, and which involved the purchase of the interest to be sold by the commissioners. (Defendant objects to the witness interpolating in answers to questions his propositions, views, suggestions, and suppositions, unless he is asked for the same, and to all the above (so called) answers that is not in reply to the questions.)

18. Did you not at the time of said commissioner's sale of said Lippitt's interest call said Wilbur out from among the by-standers, and ask him then to purchase said Lippitt's interest, yea or nay?

Ans. Not to my recollection.

19th. Who employed the counsel in this cause on behalf of the complainant?

Ans. I suppose he was employed by the complainant himself. I know nothing to the contrary.

20. Have you not expressly or impliedly given your responsibility to the counsel of the complainant in this cause for his charges?

Ans. I have not that I know of, and I don't recollect that a word has ever been said on the subject.

21. Should said counsel not be paid by said complainant, are you not under an implied obligation to pay him yourself?

Ans. Not that I know of, in any way.

Direct resumed.

I was present when Christopher Lippitt gave his deposition at Westerly, and I believe that his answers to every question put to him for the purpose of being answered to the justice were correctly put down and read to him at the time, and that he expressed himself satisfied with the same. While the justice was writing the answers, C. Lippitt and myself were conversing, and when the justice was ready for another answer, I put the question. On one occasion, and only one, to my recollection, Christopher Lippitt said something about putting down what he had just said in the conversations. I told him he could have it put down if he wished, but I did not see that it was material in any way. It was not on the point alluded to in the answer to the 110 cross interrogatory in the deposition of said Lippitt, taken before the commissioner in this case. When he gave his answer to said 110 interrogatory, he proceeded as far as the words "at the time I made it," which appeared to close his answer, and the commissioner made preparation to put another question, when the said Lippitt went one side with the defendant and his counsel, and looked over the deposition he had given at Westerly, after which he added to his answer. (All the preceding statement is objected to by the defendant.)

Cross examination resumed.

22. Was not the so called deposition, taken at Westerly, altogether ex parte?

Ans. It was.

23. Did you not go there as the agent of the complainant in this cause for the purpose of taking it in that manner?

Ans. I went there for that and other business at the same time. I was on my way to New York, and had business at Westerly.

24. Was there any one present at the taking of said deposition but yourself, said Lippitt, and the justice?

Ans. I don't recollect that there was any other person present during the whole time; there may have been; if there was, it was only casually.

25. Was any notice given to the defendant and his counsel, or to any one acting on his behalf?

Ans. Not that I know of.

26. Did you not have a conversation with said Lippitt on the subject of his testimony prior to your then taking it?

Ans. I had conversations with him more than once on the subject, and on that day previous to taking it. He did not appear very free to communicate on the subject that day, and I thought his statements were different from what he had made at other times previously. (Defendant objects to what the witness thinks.)

27. Was not the subject of the conversation had by you with said Lippitt while the justice was putting down his answers the same as that about which Lippitt was testifying?

Ans. The conversation was principally about matters connected with this case, but a good deal of it I should think about matters not material to it.

28. When said Lippitt spoke of having something put down in his answer which he had just spoken of in conversation with you, and you said it was not material, you gave your own opinion merely, did you not?

Ans. Yes.

29. Was what said Lippitt thus spoke of put down in his deposition, (so called)?

Ans. I don't think it was; he waived it entirely, I think.

R. G. HAZARD.

Subscribed and affirmed to this 3d May, A. D. 1845, before me.

SAM'L W. PECKHAM, *Commissioner*.

Witness' fees one day, $1 25.

Travel.

Statement marked (A,) referred to in the deposition of Rowland G. Hazard.

C. H. Lippitt says: R. G. Hazard came to his father's a few days before he stopped to settle accounts under contract. His father did not attend to it then. R. G. H. left for Norwich late in the evening, which alarmed C. Lipppitt, he fearing he intended to commence suit on account of balance due on contract, &c.

C. H. L. went to P. Wilbur a few days after, and told him, among other matters, of his father's apprehensions on this account, and also of the situation of his father's business generally. P. W. declined giving any more aid or endorsing further on renewal notes for endorsements before given, and P. W. went to Jewett City a few days after, when the mortgage was made for his security; C. L. sometimes consulting P. W. in regard to his business, and at the time of giving the mortgage C. L. did whatever the mortgagees recommended, without saying much about it himself. I. P. Hazard was at Jewett City, with P. W., a few days after, and staid a day or two. They conferred together a great deal. P. W. also attended the sale by the commissioners, when he and R. G. H. had conversation together about the machinery, &c. R. G. H. gave public notice at the sale of the claim under the contract to the machinery.

Respondent's deposition.

I, Christopher Lippitt, of Westerly, in the county of Washington, in the State of Rhode Island, on oath do testify and say:

Questions by William H. Potter, esq., counsel for complainant.

1. Where do you reside, and what is your occupation?

Answer. I reside in Westerly, in this State, and am a manufacturer.

2. Are you acquainted with Rowland G. Hazard and Isaac P. Hazard, transacting business under the firm of Rowland G. Hazard & Co., and Samson Almy, formerly of the city of Providence; if so, how long have you known them?

Answer. I am acquainted with Rowland G. Hazard and Isaac P. Hazard, and have known them from 1828; I first knew Mr. Almy [in] 1829.

3. Are you acquainted with Peleg Wilbur, defendant in this suit, and are you related to him? If so, state how.

Answer. I am acquainted with him, and am his brother in law; I married his sister.

4. Did you or not, on or about the 7th day of March, 1828, enter into a written agreement with said Rowland G. Hazard & Co. in relation to the manufacture of cotton; and if so, is the paper now shown to you, and annexed to the complainant's bill, marked (A,) a correct copy of said agreement?

Answer. I did enter into such an agreement with them, and think it is a correct copy.

5. When did said Rowland G. Hazard & Co. commence furnishing you with cotton under said contract, and when did they cease furnishing you with cotton under the same?

Answer. They commenced furnishing cotton immediately after the execution of the contract; they continued to supply me with cotton until the latter part of May, 1829.

6. Did or did not said Rowland G. Hazard & Co. fail in the year 1829?

Answer. They did; it was in the latter part of May.

7. Did or not the assignees of Rowland G. Hazard & Co., after their said failure, furnish you with cotton under said contract; if so, how long?

Answer. They furnished me with two or three lots under said contract, and then refused to send me any more; they furnished me until, I think, the fore part of July, 1829; it was the 7th of July that I saw Mr Almy afterwards, and I concluded that was the time.

8. Did or not said Rowland G. Hazard & Co. and the assignees of said Rowland G. Hazard & Co., after their failure, refuse to furnish you with cotton under and according to said contract?

Answer. They did refuse to furnish me. I received a letter from Charles Low, as one of the assignees, saying we can furnish you with no more cotton. After receiving this letter, I went and saw Mr. Low myself in regard to furnishing me with cotton; he still declined furnishing any cotton.

9. Was or was not said contract with Rowland G. Hazard & Co. an advantageous and profitable contract for you?

Answer. I consider that it was; that the price I had for manufacturing was sufficient to afford me a handsome profit, independent of

one-half of the profits that was to arise from the avails of the goods that were manufacturing.

10. Did or not said Rowland G. Hazard & Co. render you a statement of the business under said contract; if so, did that show a profit or loss to you; and how much, and how long a time did it cover?

Answer. After I had been running six months, Rowland G. Hazard & Co. rendered me a statement, showing that my part of the profits arising from the business was six hundred and odd dollars. I don't know the exact sum over six hundred dollars; the statement covered the six months from the commencement of the contract.

11. What do you mean by your half of the profits in the last answer; one-half of the profits on the sale of the goods, independent of the 3½ cents for manufacturing, or not?

Ans. No, I considered it the nett proceeds arising from the sale of the goods, independent of the price for manufacturing.

12. Was or not the manufacturing business disastrous or unprofitable in the fall and winter of 1828–'29?

Answer. It was generally considered so, and I found it so myself.

13. How was it in the summer of 1828?

Answer. Manufacturing business was then considered very good.

14. Did you or not, at any time subsequent to the rendering of said statement of affairs by said Rowland G. Hazard & Co., obtain from them or from their assignees any other statement of the same?

Answer. There was one other statement that was rendered afterwards. It was rendered by Rowland G. Hazard & Co. I think it was of the six months following the other six months.

15. Did you after said last statement repeatedly call for further statements, and were you or not unable to obtain the same?

Answer. In my letters to Rowland G. Hazard & Co., and Charles Low as assignee of R. G. Hazard & Co., I find that at different times I solicited and urged a settlement. I was never able to obtain any from either of them.

16. At the time of the refusal of said Rowland G. Hazard & Co. and their assignees longer to furnish you with cotton under and according to said contract, what was your own condition as to pecuniary credit?

Ans. I never knew any thing different but that my credit was good.

17. After the refusal of said Rowland G. Hazard & Co. and their assignees so to furnish you with cotton, did you purchase your own cotton, or was it furnished you by another person; if so, by whom, and how?

Ans. I didn't purchase any cotton myself, not at this time, and was furnished with cotton by Samson Almy; he supplied me by a continuation of the contract that I made with R. G. Hazard & Co. After I saw Mr. Low, and had this personal conversation with him, he still declined furnishing cotton; he said, we have thought of getting Samson Almy to furnish it, and went with me to Mr. Almy's compting room. Mr. Almy wasn't in; and when we came out Mr. Low said, I am in a hurry, and must go back; but you had better see Mr. Almy, and see if

you can't make an arrangement with him to supply you with cotton. Mr. Almy did then agree to furnish me with cotton, and was to have 3¼ cents for manufacturing, 3¼ cents in cash on the delivery of the goods, and a quarter of a cent on a yard was to be applied to the debt I owed R. G. Hazard on the machinery, and I was to have one-half of the profits arising from the business, which was to be applied also towards the payment of the debt for the machinery.

18. Can you state about the time Samson Almy commenced furnishing you with cotton, under said last arrangement?

Ans. It was the fore part of July, I think the 7th, 1829.

19. How long did he continue thus to furnish you with cotton?

Ans. I think till the latter part of October, or the fore part of November, 1832. I can't recollect which it was; somewhere about that period.

20. Did you or not, during the time you were furnished with cotton, by said Almy, or afterwards, have any conversation with him in regard to said contract or machinery; if so, please state what said Almy said?

Ans. At the time I stopped manufacturing for Mr. Almy, we had some conversation about furnishing cotton. Mr. Almy says that, if I was in your place, I wouldn't manufacture for them any longer, they are all bankrupt, you don't know who you are manufacturing for. I observed to Mr. Almy that, if I stopped receiving cotton from you, won't it be an injury to you? He said, no, not in the least, for I think I've got my pay, and more too. I then observed to him, that probably I might stand in need of some assistance from him, if I commenced on my own account; he promised to render me all the assistance that he well could, and gave me some recommendations and introductions, where I might buy cotton. Afterwards, some time in the year 1834, he gave me recommendations to go to New York to buy cotton. I stopped by the advice and consent of Mr. Almy.

21. What induced you, after said Roland G. Hazard & Co., and their assignees, so refused to furnish you with cotton under said contract, to manufacture for Mr. Almy as aforesaid?

Ans. I was induced to manufacture for him because I could'nt buy cotton and stock for the mill myself. It was so difficult for any one to buy cotton in those times, that I was glad to get it from any source. I refer to 1829, the great panic that prevailed in regard to manufacturers.

22. Were you or not greatly embarrassed, and did you not suffer great pecuniary loss, in consequence of the said refusal by R. G. Hazard & Co. and their assignees, to continue to furnish you with cotton under said contract?

Ans. I did suffer a great deal, and was under a great deal of embarrassment, and had to reduce the price of manufacturing for Mr. Almy in consequence of it. I say reduce the price; I had the same price, but I had to submit to a different arrangement; one quarter of a cent was to be applied to the payment of the machinery, as well as my one-half of the profits as before stated.

23. Would or would not the profits you were to receive from said R. G. Hazard & Co., out of the 3¼ cents per yard for manufacturing,

with your half of the profits upon the sales, have enabled you to pay [illegible] the debt due for said machinery, if they had fulfilled their contract?

Ans. What I could have saved over and above the costs of manufacturing, with the addition of one-half of the profits, would have amply enabled me to pay for the machinery.

24. What did it at that time, as near as you can tell, cost you to manufacture a yard of cloth under said contract?

Ans. We used to estimate that it cost two cents and a quarter, or two and a half.

25. Did you, or any other person to your knowledge, prior to the 8th day of December 1835, inform the said Peleg Wilbur that you had entered into said contract with the said R. G. Hazard & Co., or do you know or believe that prior to, or on that day, said Wilbur had in any way or manner been informed of the nature of the contract you had thus entered into?

Ans. I told Mr. Wilbur that I had entered into a contract with R. G. Hazard & Co., but I have no knowledge that he knew, or reason to believe that he knew, any thing as relates to the conditions of the contract. I never showed him the contract, not to my knowledge, and have no knowledge or information that he ever see it, till after the conveyance of the machinery to Mr. Wilbur, which was on December the 8th, 1835. Some two or three months after this, I think it was at the time Mr. Wilbur was trying to negociate with Esquire Morgan and John W. Fanning, he then asked me to let him see the contract. I did. After he had looked it over, he asked me why I didn't tell him that R. G. Hazard & Co. had a lien on that machinery. I told him, that they hadn't any lien on it, for I had taken the advice of Esquire Strong, of Norwich, in respect to it.

26. What was the time you shew the contract to Mr. Wilbur as just stated, and when you had the last mentioned conversation with him?

Ans. I am not able to state the exact time, but it was some time after the conveyance of the mortgage to Mr. Wilbur.

27. Was it or not, as well as you can recollect, at the time of the sale by said Wilbur, of his interest in the mortgage (from you to him) to Morgan and Fanning?

Ans. I think it was at the time Mr. Wilbur made the sale to Morgan and Fanning.

28. Did you or not, at any time prior to Dec. 8, 1835, or then, state to said Wilbur or give him to understand in any way, or have you any reason to believe that he then knew that said R. G. Hazard & Co., or their assignees, had by said contract any lien on said machinery?

Ans. I have not any reason to believe that he had any means of knowing any thing in regard to R. G. Hazard & Co., or their assignees, having any lien on said machinery. I never did state to him, nor give him to understand, prior to the time above mentioned, any thing in relation to it.

29. Was or not said contract of said R. G. Hazard & Co. recorded in the records of the town where you resided, or where said machinery was located, at the time of its date or at any other time?

Ans. It was not to my knowledge.

30. Was you or not, in the actual possession of said machinery, and did you or not treat the same in every respect as your own, from the time of said contract with said R. G. Hazard & Co., until the time of said mortgage and sale to said Wilbur?

Ans. I was in the possession of the machinery, and treated it in every respect as my own, and considered it as my own. I repaired it when I thought it was necessary, and when I got tired or dissatisfied with any machine, I put it away, and bought others and replaced it. I built several new machines myself.

31. Did you, at any time while being furnished with cotton by said Almy as aforesaid, hear him in any way assert that he had or claimed any lien on said machinery for any cause whatever?

Ans. I never heard him say that he had any lien or claim on the machinery whatever. He said the contract between me and R. G. Hazard & Co. was placed in his hands by them for the purpose of Mr. Almy's getting a debt that R. G. Hazard & Co. owed him, or that he had become obligated or bound to pay for them.

32. When did you first know that said Almy claimed to have any lien on said machinery?

Ans. He never did claim to have any lien on the machinery, not to my knowledge; I never knew it if he did; I never knew it until this suit was brought; I know it from what is said in the papers.

33. Did you take receipts from said Almy, for goods manufactured for him from time to time; if so, did he or not speak of said machinery, in said receipts, as your machinery?

Ans. I took receipts of Mr. Almy for the quarter of a cent on every yard that I manufactured for Mr. Almy; and it was expressed in those receipts to be applied to part payment of Lippitt's machinery.

34. Did said Almy at any time render you a statement of your business with him, as aforesaid; if so, when was it, and what was the statement; and is the letter and statement here presented to you, and marked D, and hereto annexed, a letter and statement from said Almy to you of the same?

Ans. I should say it was.

35. Are the letters now presented to you, marked A, B, and C, and hereto annexed, letters received by you from said Almy about the times of the dates thereof?

Ans. I should say they are.

36. How much of the machinery owned by you, under said contract with said R. G. Hazard & Co., was then actually remaining at the time of the date of the mortgage to said Wilbur of the same?

Ans. The machines that I received of R. G. Hazard & Co. were all in the mill except one speeder, I believe; but they had all undergone a thorough repair by me, and at my own expense.

37. What was the value of said remaining portion of said machinery, at the time of your giving said mortgage of the same to said Wilbur?

Ans. I can't say the exact value, but I should'nt suppose what I had remaining of what I had at the commencement of the contract was worth more than $2,000.

Cross examination.

Questions by Rowland G. Hazard for complainant.

1. After the failure of R. G. Hazard & Co., did they, or either of them, exert themselves to get some proper person to go on with the business of this contract with you?

Ans. After the failure of R. G. Hazard & Co., they assigned their property to Thomas R. Hazard and Charles Low. I then met R. G. Hazard, and Isaac P. Hazard, and Thomas R. Hazard at the store of Low & Fenner; they there told me that the contract was good for nothing, and that I had better give it up, for R. G. Hazard & Co. had failed, and wa'n't able to fulfil it; they tried to get Low & Fenner to furnish me with cotton, but they refused to do it.

2. Was there any other exertions made by them for that purpose?

Ans. They there held a consultation among themselves, and told me that the Hazards' assignees would furnish me with cotton.

3. After the business passed into the hands of S. Almy, did R. G. Hazard still continue to give it attention as his agent?

Ans. Charles Low, one of the assignees, always told me that R. G. Hazard never was appointed their agent, and that he had nothing to do with the business of the assignees.

4. After the business passed into the hands of S. Almy, did R. G. Hazard still continue to give it attention as his agent?

Ans. I never knew that he was Mr. Almy's agent in any respect.

5. Did R. G. Hazard continue to give attention to the business after it passed into the hands of said Almy?

Ans. I am sure I have no knowledge of his having anything to do with the business after it passed into Mr. Almy's hands. I never knew that he had anything to do with the goods; he used to write letters expressing a desire to have the business go on.

[6.] At the time R. G. Hazard & Co. stopped, were you indebted to them for their acceptances of your drafts, or otherwise; and to what amount?

Ans. I was indebted to R. G. Hazard & Co. for one draft at 4 months, I think—I am not positive whether 4 or 6 months—for $400; which draft was paid by my half of the profits on the goods delivered to R. G. Hazard & Co's assignees.

7. Was that a draft drawn for your own individual benefit?

Ans. Yes, it was.

8. Were there any other similar acceptances for which you were indebted to R. G. Hazard & Co.?

Ans. I don't recollect that there were; there was a draft, or else a note, that I give for cotton bought in Norwich, for about 80 dollars; this was paid by the assignees out of my half of the profits, the same as the other.

9. Did you owe them any other money on your own individual account?

Ans. I have no means of knowing, for the account wa'n't settled; there was no account rendered to me by R. G. Hazard & Co., or their

assignees, from the time they failed to the time they stopped supplying cotton.

10. When you sent a lot of goods in to R. G. Hazard & Co., did you not get your pay immediately for the manufacturing of them?

Ans. While R. G. Hazard & Co. furnished me with cotton, I was paid for goods on delivery; except one lot of goods that I took a draft for, and I couldn't get the draft discounted.

11. Then were not all other acceptances of R. G. Hazard & Co., of your drafts, except the one just alluded to, really due from you, and accepted by them for your accommodation?

Ans. I have no recollection of any other draft being given to me except that one, while R. G. Hazard & Co. had the business.

12. What became of the drafts that you say you could not get discounted?

Ans. I returned it to R. G. Hazard & Co.

13. Did they pay it?

Ans. I think they did.

14. Do you know the date of the account that was rendered about 6 months after the commencement of the contract?

Ans. I do not know the date of it.

15. Do you know the date of the one which you mentioned as having been subsequently rendered by R. G. Hazard & Co.?

Ans. I do not know the date; I am not able to give it; it must have been in the last of 1828 or first of 1829.

16. Have you the accounts?

Ans. No, I have not.

17. What have become of them?

Ans. After my troubles and failure, I burnt up all my papers.

18. At what time did you burn your papers?

Ans. After I received an exoneration from the bankrupt law.

19. What time was that?

Ans. I can't give you the exact time.

20. Do you know that there was an unpleasant controversy between Low & Fenner and R. G. Hazard & Co., in relation to the ownership of the machinery and contract before alluded to?

Ans. I knew there was a lawsuit between Low & Fenner and R. G. Hazard & Co.; I supposed the lawsuit grew out of the machinery.

21. How did you know of said suit?

Ans. I was summoned in one suit; I can't tell which; there were two suits about it.

22. For what purpose were you summoned?

Ans. To give a deposition.

23. Did you give the deposition?

Ans. Yes, I did.

24. Who was the commissioner who took the deposition, and where was it taken?

Ans. I don't recollect who the commissioner was; but I believe it was taken in Mr. Greene's office, in this city; I think it was Richard Greene's.

25. During the latter part of the time that you received cotton of Samson Almy, did Charles Low, or Low & Fenner, claim that they had the right to furnish the cotton to you; and did they urge you to stop taking of said Samson and receive of them?

Deft. objects to anything did or done by Low or Fenner.

Ans. At the time I was in Providence, R. G. Hazard, Charles Low, and George Fenner disagreed among themselves who should furnish cotton. R. G. Hazard claimed the right, and Low & Fenner claimed the right; each of them promised to leave word with Mr. Almy about sending me a lot of cotton. They never persuaded or urged me, or said anything to me about not receiving any more of Mr. Almy, or receiving it of them.

26. At what time was this?

Ans. I think it was the fore part of March, 1830.

27. Did they not, at any other time, request you to stop taking from Samson Almy?

Ans. They never did at any time request me to stop taking cotton of Samson Almy, to my recollection.

28. Did you never tell Samson Almy that they objected to your receiving cotton of him, or that they wanted to furnish it themselves?

Ans. I never did tell Samson Almy that they objected, and never heard them express any desire to furnish it themselves.

29. In what did R. G. Hazard and Charles Low, or Low & Fenner, differ in regard to sending the cotton?

Ans. I stated then, I believe, that they both claimed the right to send it, but on what ground they differed I don't know; they had the conversation between themselves together.

30. Did you take good care of the machinery, and keep it in good repair, and did you keep it insured?

Ans. I did take good care of the machinery, and always repaired a machine whenever I thought it needed it, and always kept it insured.

31. At what office did you insure it?

Ans. At the Washington Insurance office in this city.

32. What amount of repairs did you put on said machinery?

Ans. I am not able to state the exact amount; but I always kept a hand at work, at nine shillings a day, doing the repairs.

33. What do you estimate the cost of the labor and materials used in making said repairs?

Ans. The labor cost me a dollar and a half a day. I can't make any estimate. What the materials cost, I can't make any estimate about.

34. Did your estimate of the value of the machinery, when transferred to Peleg Wilbur, include or exclude the repairs and alterations which you had made?

Ans. I estimated that the value of the machinery as it then was, if it was to be removed and taken out of my mill, would not be worth more than $2,000.

35. Did Samson Almy furnish a new speeder?

Ans. Samson Almy paid the bill for a new speeder, but I made the bargain for it myself of Mr. Field, with the understanding that he, the said Samson, was to assume the payment of it.

36. What was the price of the speeder?

Ans. It was $700, I believe; the first one was $750; I mean the one furnished by R. G. Hazard & Co. under the contract.

37. At what time was that speeder bought, for which S. Almy paid?

Ans. I can't give the date, but it was within the time that Samson Almy was furnishing me with cotton.. It was in 1831.

38. Was that speeder furnished by S. Almy included in your estimate of $2,000?

Ans. It was.

39. Did Samson Almy pay you in money, at the rate of 3¼ cents per yard, during any portion of the time in which he furnished cotton?

Ans. He did not; he paid me 3¼ cents on delivery of the goods, and ¼ of a cent was applied to the payment of the machinery I had of R. G. Hazard & Co.

40. Have you the receipts for the ¼ cent per yard you have before alluded [to]?

Ans. I have not the receipts myself.

41. What has become of them?

Ans. I gave them to my son, of New London. I put them with the letters that he selected out, that he thought that would be a benefit to this case.

42. What has become of them?

Ans. Well, I suppose they are with the rest of the papers; I haven't seen them.

43. Are the letters which you allude to those which were produced during the direct examination?

Ans. I can't say whether they are the exact letters; as I said before, he selected out those that he thought would be useful.

44. Had you other letters from Samson Almy, besides those which have been produced?

Ans. I can't say positive; but I presume there were other letters from time to time.

45. In what way did you suffer loss by the failure of R. G Hazard & Co.?

Ans. Why, in consequence of his failure, I lost the benefit of being supplied with cotton from him, and in the arrangement with Samson Almy to be furnished with cotton by him, I had to submit to a deduction from the original price that I was to receive for manufacturing.

46. What was the original price?

Ans. 3½ cents per yard.

47. What was the price under the arrangement with Samson Almy?

Ans. I received but 3¼ cents per yard for manufacturing.

48. Have you not before stated that you received 3½ cents?

Ans. I stated that I was to receive 3½ cents, but there was but 3¼ cents to be paid to me in cash; the other ¼ cent was to go towards the payment of the machinery.

49. Where then was the loss?

Ans. The loss was, I lost a quarter of a cent on every yard I manufactured, towards enabling me to pay my expenses of help, and repairs of the mill.

50. Have you ever been in the habit of buying cotton in Providence on your own account?

Ans. After Samson Almy stopped furnishing me with cotton, I bought cotton in Providence on my own account, by the assistance of Mr. Peleg Wilbur endorsing my note.

51. What is and has been for years past the usual credit in buying cotton in Providence?

Ans. I don't know what is nor has been, but at the time I bought I bought on three months, four months, and six months.

52. Did you attend to the purchase of the cotton in person?

Ans. I did part of the time; at other times I sent my son.

53. Which did it more generally, you or your son?

Ans. I don't think there was much difference; when it was convenient for me to come, I come myself.

54. Which of you attended to getting the notes endorsed and making the payments for the cotton?

Ans. As I stated before, sometimes I attended to it myself, and sometimes I sent my son to do it.

52. Did you generally purchase your stock in Providence?

Ans. What I purchased myself I purchased in Providence, with the exception of a small lot I had reference to in Norwich, but I sent my son to New York with a letter of recommendation that I had from Mr. Almy, and he purchased cotton there several times on the strength of the recommendation; I gave my own notes, or drew drafts for the payment of the cotton my son bought in New York.

56. Did your son buy any cotton in Providence?

Ans. He did; he bought several lots, and I believe Mr. Wilbur endorsed the notes which were always given by me.

57. Were those notes paid in full at maturity? Or did you avail yourself of the custom here of paying instalments and renewing for the balance at each time?

Ans. They were generally paid in full, but I did have some that was renewed, once, paid in half and renewed for the other half; Mr. Wilbur paid one note here for me in full, that had not been discounted.

58. Who generally attended to the payments and renewals of the notes?

Ans. I attended to it myself when it was convenient, and when it wa'n't I sent my son to attend to them.

59. What is the name of your son, alluded to in the foregoing answers?

Ans. Christopher Harris.

60. Which came oftenest to Providence, you or your son?

Ans. I think probable that he came as often, or oftener than I did; when it wa'n't convenient for me I always sent him.

61. To whom were the bills of the machinery furnished by R. G. Hazard & Co. made out, and to whom were they receipted?

Ans. The first 500 spindles and preparation which was bought prior to the contract with R. G. Hazard & Co. by me, I gave my own private notes for; then after the contract was made, R. G. Hazard & Co.

gave their notes, and I went with them to the persons, and [illegible] and took up my notes. The bills having been made out in my name at the time the machinery was delivered to me, and whether these were new bills, made out in Mr. Hazard's name, I am not able to say; but the other 300 spindles alluded to in the contract, the bills were made out in R. G. Hazard & Co's name.

62. Did you not send to R. G. Hazard & Co. bills of the makers of the machinery for the whole?

Ans. I ain't able to say, as I said before, as respects the first 500 spindles, whether there were bills made out in their name or not.

63. Who built the spinning?

Ans. Mr. Newell & Co., I believe that was the firm here in this city.

64. At what time did they deliver it?

Ans. Part on't was delivered prior to the contract with R. G. Hazard & Co., and part of it afterwards.

65. To whom was the bill of the last speeders bought made?

Ans. The first was a bill made out to me, and Mr. Field wrote to me in respect to the payment; I then wrote him to make out a bill to Mr. Samson Almy for the same, and present it to him for payment; it was the understanding that he was to assume the payment of it when I purchased, and if he didn't pay for it, to inform me to that effect, and I would see it was paid for immediately.

66. Did you buy your stock of cotton in large or small lots?

Ans. I bought it in lots from 10 to 15 to 20 bales a lot.

67. How many bales did your mill require a month?

Ans. Somewhere between 6 and 8 bales.

68. How many spindles had you?

Ans. There was about 800.

69. What number of yarn did you spin?

Ans. I spun from 16 to 18, as nigh as I could run it.

70. Do you know how many skeins you usually got off a spindle per day?

Ans. From two to three.

71. What kind of cotton did you usually work?

Ans. I used to buy Upland, Georgia, Alabama, and some New Orleans.

72. At the time Samson Almy furnished your stock, was he running other mills also?

Ans. I don't know any thing about what mills he was running, except what he furnished me.

73. How far is Almeyville from where you then resided?

Ans. I don't know how far it is. I didn't know there was a place called by that name.

74. What was the credit and general reputation for property of Samson Almy at the time he was furnishing you with stock?

Ans. I never knew any thing but what his credit and reputation was good. I didn't know any thing about his property. I had no means of knowing.

75. Was he or was he not generally considered wealthy?

[illegible] He was considered to be a man of property, so far as I ever [illegible].

76. In your answer to the 30th direct interrogatory, you say you put away machinery, and replaced it with other which you bought, and built some. State what you bought, what you put away, and what you built.

Ans. I put away what is called the Brewster Rubber; I bought a Taunton improved speeder, in lieu of that and the two double speeders; I bought one card of James Goddard of Norwich; I built two new looms; I built a railway, and a head of drawing to the railway. I believe that was all.

77. What was the cost of the machinery you built?

Ans. The looms cost me sixty dollars apiece, and the railway and drawing head was seventy five dollars.

78. At what time did you build them?

Ans. I can't say at what time I built them; it is so long ago I can't recollect.

79. Who was furnishing you with cotton at the time?

Ans. I should think it was along the latter part of the time of Samson Almy's furnishing cotton.

80. Do you know that Low & Fenner failed in business, and about what time?

Ans. I know they did fail in business; I ain't able to give the time, but I think about the year 1830.

81. What was the result of the business while you furnished stock for yourself?

Ans. I am not able to tell. If I had my books and papers that I had, I might ascertain what the profit was.

82. Was there a profit?

Ans. I expect it afforded me a small profit, but very small, if any. I don't know whether there was any or not.

83. Were you worth property at the time you made the contract with R. G. Hazard & Co.?

Ans. I owned a house and lot in Connecticut. That was all the property I had, and I owed for a part of that. I owned, also, a factory and water privilege, and real estate attached to it.

84. In the first statement furnished to you by R. G. Hazard & Co., was there a quantity of goods, then on hand, put down at a certain price, which was higher than the price subsequently realized for them?

Ans. There were some goods remaining on hand in the statement by them rendered. Whether they were estimated higher than what they realized from them, I ain't able to say. The bills of sales were made out to them; I have no knowledge of them.

85. Did the second statement show a profit or loss; if so, how much?

Ans. It rather strikes me that it was represented as being a loss on it; I can't say how much.

86. Was there a great fall of goods between the times of the two statements?

Ans. I had no means of knowing whether there was a fall or not. I had no goods to send to market; not of my own.

87. How many yards of cloth did you make per week on [illegible]

Ans. I made from three to five thousand, and have exceeded five thousand yards.

88. Which speeder did you sell?

Ans. I sold Brewster's rubber for 30 pounds of cotton yarn, and never got any thing for it; for the man I sold it to went to Texas.

89. What became of the papers that you mention as having been selected out by your son, before you burnt the others?

Ans. Well, I can't say what became of them; but I suppose, as my son was counsel for Mr. Wilbur in this case, he sent them to Mr. Wilbur, or his counsel in Providence. I never see them after he selected them out.

90. What would the machinery have been worth to a person who wanted it to remain in the mill?

Ans. It would have been worth more to have remained in the mill than to have been taken out of it; probably it might have been worth five or six hundred dollars more. It would have cost that to have removed it, and the injury to it.

91. How did you expect to pay Mr. Field for the speeder, if S. Almy did not pay it?

Ans. I expected to pay it in money, or drafts on cotton goods that I had sent to the commission merchants for sale.

92. During the time that you were manufacturing under this contract, were you engaged in other business?

Ans. I kept a store—a merchant's store.

93. Did you manufacture any other goods?

Ans. I was not concerned in any other manufacture.

94. Where did the goods come from that you speak of as having been consigned, and by which you expected to pay for the speeder?

Ans. I was mistaken in regard to the goods. I expected to have paid for the speeder *either* by getting a note discounted at bank, if I didn't receive enough from the price I was to receive from Mr. Almy for manufacturing.

95. While you were manufacturing for S. Almy, did you not frequently find it necessary to get him to accept your drafts for your accommodation, to enable you to pay your current expenses?

Ans. I had some drafts that were accepted by Mr. Almy, but I always was able to pay them before or at the time they became due, out of the price of manufacturing.

96. Before we adjourned to dinner yesterday, you stated that you never knew any thing different but that your credit was good; please state what conversation you had with the defendant or his counsel, with respect to that answer, during the adjournment.

Ans. All the conversation I had with him I observed, as I was going out, in regard to the statement of my credit's being good, I had reference to my credit in the State of Connecticut where I lived, and it was never otherways considered than good there, in the vicinity where I was known; I asked if I could have the privilege of explaining it? He told me that I could. I don't recollect that any thing more was said about it.

98. At what time was the sale of the machinery by the commissioners?

Ans. The commissioners did not sell the machinery; they sold the right of redemption in, and to use my property. I believe it was in October, 1835.

98. Did Peleg Wilbur, after you made the mortgage to him, immediately attach other property of yours?

Ans. He attached some personal property, and a lot of cotton at New London.

99. Was your business immediately broken up thereby?

Ans. My business was broken up, and I was obliged to stop in consequence of other creditors attaching every thing that they could get hold of.

100. Was R. G. Hazard at your house for the purpose of settling all the accounts relative to the contract, a few days before your mortgage to P. Wilbur?

Ans. R. G. Hazard was at my house something like two or three weeks previous to the mortgage to Mr. Wilbur, and said something about settling the accounts, but he produced no accounts, and my son, that was familiar with my books, was absent from home; and I not being familiar with the books myself, I told Mr. Hazard I would rather he would be present. I also told him that Charles Low denied that he had any authority to transact any business in relation to the assignees.

101. Were you alarmed by the time or manner in which R. G. Hazard left the village?

Ans. I informed my son the next morning that R. G. Hazard was at my store in the evening previous; and I told my son that it was probable he had gone to Norwich for the purpose of commencing a suit against me for the balance of that machinery, as I had been to the hotel where I supposed he put up, and learned that he had left there very late in the evening.

102. Did you ever communicate that apprehension to Peleg Wilbur?

Ans. I have no recollection that I ever did.

102. At what time in the evening was it that R. Hazard saw you?

Ans. I can't say the exact hour, but it was about 6 or 7 o'clock in the evening.

103. Do you know what time R. G. Hazard arrived there?

Ans. I do not. I have no means of knowing; for the first I saw of him was in the evening at my store.

104. Was the letter now shown to you, marked (E,) written by your instruction?

Ans. I presume it was written by my instruction. I don't think my son would have written it without consulting me; but I have no recollection about it, or even having seen it.

105. Was it written by the same son to whom you refer in your answer to the 100 and 101 questions?

Ans. I suppose it was the same; it is his handwriting.

(The deft. objects to the annexation of this letter, unless it was written by the witness, or his express directions.)

106. Was it after that letter was written that R. G. Hazard was at your house in the evening, as before mentioned?

Ans. I should think it was before the letter was written.

107. Why do you think it was before?

Ans. I have said before that I thought it was two or three weeks previous to my conveyance to Mr. Wilbur that R. G. Hazard was at my house, as before stated.

108. Is the paper now shown to you, and hereto annexed, marked F, a copy of the letter to which the one just referred to was an answer?

(Deft. objects to the annexing of the paper referred to.)

Ans. I can't say whether it is or is not.

109. Were the papers now shown to you, and hereto annexed, marked G, H, I, J, K, written and signed by you?

Ans. I believe they were; they are in my handwriting.

110. Is the paper marked L, and annexed hereto, signed by you; and is the statement thereto annexed in your handwriting; and are the statements made in both said papers true?

Ans. The one annexed by wafer is in my handwriting, the other is not; the one that is said to be affidavit, so far as is entered there is true; but he didn't put down half the answers that I made to the questions at the time he took the depositions. The statement in my own handwriting is true, so far as I can recollect, at the time I made it. In the affidavit it is stated.

111. I mentioned to Peleg Wilbur about Mr. Hazard's going away so abruptly; my answer in full was given to the magistrate; that I don't know but I might some time or other have named the circumstance to Mr. Wilbur, but I have no recollection of saying any thing to him about it; that is precisely as I answered it.

112. Did you not read the deposition, or did not the justice read the deposition to you before you signed it?

Ans. The justice read the deposition, I did not read it; and at the same time I told him it was entirely wrong, that he did not put down the full answer.

(The paper last referred to, marked L, is objected to by deft.)

113. Is the deposition on file in the office of the clerk of the circuit court, in the case in equity, Timothy C. Kendall vs. Thomas R. Hazard, with your signature thereto, the one you have before alluded to; did you sign the same, and are the statements therein true?

Ans. My signature is to it, and it is the one I have heretofore alluded to; I don't recollect having ever given any other one. I presume I considered the statements to be true at the time I stated them.

114. On the same file is there a deposition signed Peleg Wilbur, and is the signature thereto in the handwriting of the defendant in this case?

(This objected to by defendant.)

Ans. The deposition that is shown to me, I should think was the signature of Peleg Wilbur, the same person who is defendant in this suit.

115. Is there also on same file a deposition signed by Christopher W. Lippitt, and is the signature to the same the signature of your son, to whom you have before alluded?

(This objected to by defendant.)

Ans. I should think it was his signature, and it is the same son that I have before alluded to. I don't know any thing about the deposition. I never read it, and wasn't present when it was taken.

Direct examination resumed.

Questions by William H. Potter, esq.

38. You have spoken in your cross examination of an insurance upon the machinery; in whose name was that insurance effected?

Ans. The first time I had it insured it was insured in R. G. Hazard & Co's name; after the failure of R. G. Hazard & Co. it was always kept insured on my own account.

39. You have been asked whether C. Low, or Low & Fenner, did not object to your receiving cotton of S. Almy; did they or not, at the time of the arrangement with said Almy as aforesaid, object to the same?

Ans. I have no recollection that they made any objection to it at that time.

40. Did they or not have any difficulty among themselves, and with said R. G. Hazard & Co. afterwards, about furnishing you with cotton, and if so, how long afterwards?

Ans. I have stated heretofore that they disagreed as to who should furnish me with cotton. The time was some time in 1830, I guess in the latter part of February or first of March; no, stop, I am in error, because it was after I commenced manufacturing for Mr. Almy, and that was in July. I am right, after all; it was the latter part of February, or fore part of March, 1830.

41. You have been asked about the cost of speeders in the cross examination, was not their cost as stated by you high, and did they not soon depreciate in value and become almost useless? If so, state how.

Ans. It was a high price for them, and they were reduced very much in value; they being a very heavy machine to run, it required a good deal of power to operate them, and considerable expense in keeping them in repair.

42. What was the value of the two Field speeders at the time of the date of said mortgage, to Peleg Wilbur and others?

Ans. I had sot the two speeders one side in a corner of the mill; I had offered to sell them for 150 dollars, but I could never get an offer of more than 100 a-piece for them.

43. You have been asked, in the cross examination, if there was not some cloth put down in the first statement of R. G. Hazard & Co. to you, which was subsequently sold for less than its value as then put down; was not said cloth, and other cloth made by you for said Hazard & Co., under said contract, sold by them, or by others for them, at

forced sales, and at a sacrifice to enable them to raise money or to pay the agents in whose hands it was placed for sale, for advances made thereon?

Ans. I understood that it was sold at a sacrifice, at forced sales, for the purpose of raising money to pay for the advances, as stated in the question. It was put down at a certain price in the statement, and was subsequently sold [at] a less price.

44. When S. Almy stopped furnishing you with cotton, and stated that his debt was paid as aforesaid, and advised you to manufacture on your own account thereafterwards, to whom was the letter of credit then given you by him addressed; and did he also then advise you to send your goods in future to those persons to whom the letter was addressed?

Ans. It was addressed to Messrs. Jenkins, Merrick & Co., New York; I was also advised by Mr. Almy to send my goods to them for sale, and I did send most of my goods to them in future accordingly.

45. You stated, in the cross examination, that the date of the commissioner's sale of your right of redemption in your property was, as you thought, in October, 1835; was it or not after the said mortgage of said machinery to said Wilbur and others?

Ans. It was after the mortgage to Mr. Wilbur and others.

46. Can you state now more correctly the date of said sale by said commissioners?

Ans. It must have been in October, 1836; I was mistaken in the year, it was the 15th of October of the year.

47. Did Rowland G. Hazard call upon you at Westerly for the purpose, as he said, of then taking your deposition, to be used in the trial of this suit; if so, when?

Ans. He did call on me for the purpose of taking my deposition on the 17th of August, A. D. 1843. He represented to me it was to be used in this suit.

48. Who was present?

Ans. No one was present except Mr. Hazard, the magistrate who took the deposition, and myself.

49. Did said Hazard put questions to you at that time?

Ans. He did; he put all the questions to me.

50. Were the whole of your answers thereto fully put down?

Ans. They were not.

51. Did you request them to be fully put down.

Ans. I did request them to be fully put down, and remonstrated strongly against their proceedings.

52. Is the paper produced by Mr. Hazard, and hereto annexed, marked L, the so-called deposition then given by you?

Ans. I should say it was.

53. Did you at different times, at the request of Rowland G. Hazard & Co., their assignees, and Samson Almy, run out the stock of said mill; and did you not materially suffer thereby? And state the times when.

Ans. I did, at the request of the persons named in the question, run

cloth that was in the mill at four different times, at a great disadvantage and injury to me in my business. I was requested to run out after the failure of R. G. Hazard & Co., and after the assignees refused to furnish, and twice after Mr. Almy commenced to furnish.

Cross examination resumed.

Questions by Rowland G. Hazard.

116. In what way did you understand that the cloth was sold at a forced sale, and at a sacrifice?

Ans. I was informed by Peleg Wilbur that it was sold so by a Mr. Bulfinch, of Boston.

117. Was Mr. Bulfinch a regular commission merchant in Boston?

Ans. I was not acquainted with him, but I supposed he was a regular commission merchant.

CHRISTOPHER LIPPITT.

Subscribed and sworn to this 9th day of November, 1844, before me,
SAMUEL W. PECKHAM,
Commissioner.

Witness fee, two days,	2 50
42 miles travel,	4 20
	$6 70

(A.)

PROVIDENCE, 2*d month* 23*d*, 1830.

CHRISTOPHER LIPPITT.

RESPECTED FRIEND: Thy favor of the 7th came duly to hand, and I regret that I was not at home when thee was in town. I shall be willing to render thee all the assistance I can in negotiating with Hazard's assignees for the machinery in thy mill, and I hope thee will be able to make such arrangements as will be to thy advantage. I expect to be from home most of this week, but shall be at home the beginning of next. It will not be of any consequence about thy sending the goods in time to meet thy draft.

Respectfully, thy friend,
SAMSON ALMY.

(B.)

PROVIDENCE, 3*d month* 10*th*, 1830.

CHRISTOPHER LIPPITT.

RESPECTED FRIEND: I have just received thy letter of the eighth, and also 20 bales sheeting. As there is not much prospect of making any arrangement respecting the machinery in thy mill at present, I have, with the consent of Hazard, (and Low consented to it a few days since,) sent thee 8 bales cotton, and shall continue to furnish thee with the article, as I consider the machinery has been placed in my

hands by all interested. As respects the ¼ cent towards [illegible] think it had better be arranged as it has been, [illegible] what cotton I have on hand is manufactured. This cotton must be kept separate from what has been sent thee before, and the goods manufactured must be kept by themselves, as I was obliged to make a different arrangement, or give up the business.

Respectfully, thy friend,

S. ALMY.

Enclosed is $160 35, balance due thee for manufacturing.

(C.)

PROVIDENCE, *2d month 25th*, 1831.

C. LIPPITT.

RESPECTED FRIEND: I duly received thine of the 22d inst. I suppose it will be necessary to get the sanction of the assignees before I engage a speeder; but as I have had most of the conversation respecting the business with R. Hazard, I will embrace the first opportunity to consult with him on the subject. My contract with C. Potter expires the third of next month. I should like to be informed when all the goods are received up to that time.

Respectfully, thy friend,

SAMSON ALMY.

(D.)

PROVIDENCE, *3d month 1st*, 1832.

CHRISTOPHER LIPPITT.

RESPECTED FRIEND: Thy favor of the 3d ult. has been received. Below is a statement of the situation of the mill from 4th month 1st, 1830, which I believe is pretty correct. The goods you have on hand may be shipped to Jenkins, Merrick & Co., New York.

I should think it would not be best to communicate the statement of the mill to Low, Fenner & Co., or either of them.

Thy assured friend,

SAMSON ALMY.

Goods in agent's hands,	21432 yds.	brown sheeting,	at 9 cts.,		1,928 88
" " "	16743½ "	bleach'd "	at 10 "		1,674 05
At the mill, per thy inventory, -	11193 "	brown "	at 9 "		1,007 37
" " "	2525 lbs.	yarn,	at 25 "		631 25
" " "	11063 "	cotton,	at 9⅝ "		1,064 81
					6,306 36
Balance due me on account,			- -		390 93
Balance in favor of mill,			- - -		$5,915 43

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(E.)

JEWETT CITY, *Nov. 28th*, 1835.

Mr. R. G. HAZARD.

DEAR SIR: Your health and particular situation seems to demand my immediate attention to the business between us; but unavoidable circumstances prevent.

I regret that I cannot meet you on Monday next, or to-day fix on a time when I can. I am very short of help in my mill, and if I left home on Monday next, a part of my mill must stop.

I am expecting some help the forepart of next week, and as soon as I can get my mill a little regulated I will come. It is, however, doubtful whether I am there next week or not; if I should not, my son will, and I may possibly be able to inform you by him when I can attend to it.

Respectfully, your friend,
CHRISTOPHER LIPPITT,
By C. H. LIPPITT.

(F.)

E. F. C. L. I sincerely sympathize with you and your family in the affliction which has just visited you, and am loth to intrude myself upon those feelings which such an event must have called forth; I am, however, peculiarly situated; my arrangements are all made for going to New Orleans; my health is already suffering from the effects of the weather; Samson wishes me to be here when you settle the accounts, and I think it obligatory on me to meet his wishes in that particular; but for this I should have been on my way by this time; under these circumstances I hope you will give it your attention at the earliest day which your own feelings will admit; if you can come on Monday it would very much oblige me; please inform me or Samson by to-morrow's mail, that we may arrange according to circumstances.

My regards to your family, your ass'd friend,
R. G. HAZARD.

(G.)

JEWETT CITY, 13*th June*, 1829.

Mr. ROWLAND G. HAZARD.

DEAR SIR: Your favor of the 9th instant I have received. I expected that from what was said when I was there last that I was not to be called on to pay any of those drafts, except the one of four hundred dollars which I was to pay, and it was also the understanding that I was to have twenty bales of cotton sent round by Captain Barker to Norwich, which would enable me to continue my business till there could be some new arrangement made. It is impossible for me to pay those small drafts as the time is so short before they become due, and I have two notes to pay this month at bank, one on Tuesday next for six hundred, and one on the twenty-eighth for two hundred and ninety

dollars, which is as much as I can possibly procure money to make, provided I can get my pay on the cloth for manufacturing as fast as I deliver it. I feel perfectly willing to do all that I possibly can, but in consequence of your misfortune, and I being connected in a contract with you in business, it has hurt my credit very much, so that every person I owe is calling for their pay; and money I cannot get as I could before that unhappy circumstance took place. After I have got through with those payments above, I shall be enabled to turn part of the amount for making cloth towards the payment of those drafts till they are paid up, although in reality I had not ought to pay them, as I have now stands charged on my books to R. G. Hazard & Co., (and the Griswold Factory,) for preparation to start the factory with, rising of four hundred dollars, exclusive of harnesses, shuttles, and speeders, &c., &c. And according to our contract, R. G. Hazard & Co. ought to have refunded the money I have paid for them to me. But when I mentioned it, you said you would allow me the interest on it, and in the final settlement it would not make any difference to me; nor it would not have made any if you *was* still in circumstances to fulfil the contract. Now, so much of it as will balance R. G. Hazard & Co. charge against me, excepting the machinery, I think, ought to be placed to my credit; as all the preparation is included in the policy of insurance to be insured on their account, the same as though they had actually paid for them, and the one hundred and thirteen dollars paid for the policy of insurance, and fifteen dollars sixty-four cents overpaid on some lot of cloth, is all that can be considered as cash in advance; the remainder of the balance due R. G. Hazard on settlement was for sheeting I bought of them, and cannot be considered in any other light than an account would with any other merchant for the same goods, which is usually on six months' credit. I want to come down and see you, and see if there is not some person that you can get to take the contract and continue it, as I have reasons to believe you would have done if it was not for your misfortunes. But the court is sitting now at New London, and I have the case with Mr. Slaters, respecting the water, to attend to this week, which makes it impossible for me to come till that is over; I then shall come to see you immediately.

Your assured friend,

CHRISTOPHER LIPPITT.

P. S. Notwithstanding I have had to stop two days for want of cotton, I shall have another load of goods soon, and it is indispensably necessary that I should know whether I can have the money on them when delivered or not. Please write me on return of mail, and confer on me a particular favor. Yours, &c.,

C. LIPPITT.

(H.)

JEWETT CITY, 8*th March*, 1830.

MR. SAMSON ALMY.

DEAR SIR: Here follows invoice of twenty bales of cotton sheetings, marked, numbered, and contain as follows, viz:

[illegible]	212	containing 13	pieces	399,2	yds.	Sent Armsbey & Wetherell, Boston.
	213	" 13	"	397,1	"	
	214	" 13	"	402,1	"	
	215	" 13	"	401,3	"	
	216	" 13	"	399,2	"	
	217	" 13	"	401,1	"	
	218	" 13	"	400,1	"	
	219	" 13	"	400,2	"	
	220	" 13	"	400,	"	
	221	" 13	"	402,2	"	4004,3
	222	" 13	"	400,2	"	Sent to Bleach.
	223	" 13	"	400,3	"	
	224	" 13	"	395,2	"	
	225	" 13	"	401,3	"	
	226	" 13	"	401,1	"	
	227	" 13	"	401,2	"	
	228	" 13	"	399,2	"	
	229	" 13	"	405,	"	
	230	" 13	"	398,3	"	
	231	" 13	"	398,2	"	
				8007,3	yds. 3½	$280 27

The balance for manufacturing, after paying the draft for one hundred dollars, please send me by the bearer. I have cast the manufacturing at 3½ cents, as I told Mr. Low and R. G. Hazard that I must in future have the 3½ cents instead of 3¼. You will, therefore, please send it me, unless it makes a difference to you in your arrangement with them; (that is, if you are any way the loser by doing it.) It would be better for me to have you buy that machinery even at five thousand dollars, without saying any thing about what I have paid, if you could see your way clear in doing it, as I then should save not far from three thousand dollars from the first cost, which I am bound to pay if the contract remains in their hands. When I left Providence it was unsettled who should send me the next lot of cotton, Messrs. Low & Fenner's claiming the right and R. G. Hazard also claiming it, and each of them promising to leave word with you respecting it. Do not let the team come back without fetching me some cotton, for I shall be out in a few days.

Your assured friend,

CHRISTOPER LIPPITT.

(I.)

JEWETT CITY, *26th April*, 1830.

Mr. SAMSON ALMY.

DEAR SIR: Below you have an invoice of thirty bales cotton sheetings. The eight first bales, with a cross right under the mark, contains the last made from the cotton of your first contract, except what I have

made use of in my store, and which I will [illegible] as soon [as] I can conveniently.

Yours, with due respect,

CRISTOPHER LIPPITT.

[L.] No. 260	contains	13	pieces	410,1		
261	"	13	"	399,1		
262	"	13	"	398,		
263	"	13	"	395,		
264	"	13	"	400,3		
265	"	13	"	397,		
266	"	13	"	405,3		
267	"	13	"	401,1		
268	"	13	"	405,2		
269	"	13	"	403,2		
270	"	13	"	404,2		
271	"	13	"	405,3		
272	"	13	"	402,		
273	"	13	"	406.		
274	"	13	"	405,1		
275	"	13	"	406,1		
276	"	13	"	408,2		
277	"	13	"	407,2		
278	"	13	"	404,		
279	"	13	"	406,2		
280	"	13	"	404,3		
281	"	13	"	404,2	at 31/2	$310 85
						102 57
						$413 62

(J.)

JEWETT CITY, *22d February*, 1831.

Mr. SAMSON ALMY.

SIR: I have got about sick of my leather apron speeder; it does not make near as good roping as my other speeder does; my other is one of Wm. Field's kind, (of Pawtucket.) I have used the roping made from this speeder in the mules, and the rubber roping in the frames. I have always thought that my frames did not run as well as I had reason to expect they ought, and to try the experiment my overseer put some of the roping made from Field's speeder into the frames, and gave it as his opinion that a girl or boy would tend six sides with that roping better and easier than they could three with the rubber roping, and that there would not be one quarter as much waste made as there is now in using the rubber roping. And since then I have inquired at several mills where they use, and have used, the rubber roping, and one of them has got rid of them, and the others are determined to get rid of them this season. Therefore, I have come to the determination to get rid of mine. I should like to have another of Wm. Field's kind, and should wish to have the privilege of paying for it in the same way as I

[illegible] of the machinery, and I think it will be an economical step in getting one of them [illegible], as I have no doubt it will be to the interest of all concerned, as there will be quite a saving in the waste, and of course more yarn will be made from the same stock, and better.

If it should meet your approbation, I wish you would see Mr. Field's, and have him make one as soon as he possibly can. Please write me on the subject the first opportunity.

I wish you would get me five filletings for the dauffers to my brakers, of No. 30 wire; the teeth to them now are very badly broken out, and cannot make good work with them, which is a very essential part to have the cotton well broken, to make good yarn.

When your contract is up with Mr. Potter, it will be a good time to have our account settled up, as there will be no goods remaining on hand and I wish to know how much I have paid towards the machinery.

Yours, with due respect,

CHRISTOPHER LIPPITT.

(K.)

JEWETT CITY, 17*th February*, 1830.

Mr. SAMSON ALMY.

RESPECTED FRIEND: I have sent you, by the bearer, 208 pieces of sheeting, containing 6,371¼ yards, at 3¼ cents, at bleach-house.

	2-20ths, $204.09	207.08
		15.93
¼ cent towards machinery - - - -	15.93	$223.01

Please send me by the bearer my part for manufacturing; I want it to pay a note at the bank. The draft that you accepted for one hundred dollars is due the 27th instant, and the goods to pay that amount shall be sent you by that time. I came down to Providence, the other day, almost on purpose to see you. I find that the assignees of R. G. Hazard & Co. are wishing to sell their interest that they have in the machinery that I have in my mill. I wish to make a confidential friend of you, to assist me in the purchase of that machinery, so far at least as that you shall not be any ways the loser by it, and in the end prove to the mutual advantage of us both. If you feel as though there could be any arrangement made that would meet your approbation, please write me, and, when I send down the goods to meet your acceptance, I will come and see you on the subject, provided you will be at home.

Your friend,

CHRISTOPHER LIPPITT.

(L.)

I, Christopher Lippitt, of Westerly, in the county of Washington, and State of Rhode Island, being of lawful age, and under oath do depose and say: I made a contract with R. G. Hazard & Co., in 1828, to manufacture cotton cloth at the Griswold factory, in Connecticut.

The amount of machinery bought by R. G. Hazard & Co., under the contract amounted to between nine and ten thousand dollars. I subsequently transferred and delivered said machinery to Peleg Wilbur and others, for the purpose of paying my debts then due to them; this was transferred early in December, 1835. About one or two weeks before I conveyed to Peleg Wilbur, R. G. Hazard was at my house; about that time R. G. Hazard wrote to me, requesting me to come to Providence and bring my papers. I think it was for the purpose of a settlement; when R. G. Hazard was at my house at the time above referred to, he left rather abruptly, and I was fearful it was with the intention of suing me and attaching my property. When Peleg Wilbur was at my house, I mentioned to him about Mr. Hazard's going away from my house so abruptly. At the time I was in Providence, negotiating with Low & Fenner to continue the contract which I had made with R. G. Hazard & Co., Peleg Wilbur was present, and conversed with Low & Fenner and R. G. Hazard and Co., but cannot say what their conversation was, but was under the impression it was with reference to the contract; and, after we came out, he advised me to go home. Peleg Wilbur recommended me to go to R. G. Hazard & Co. to make a contract, and introduced me to them. A short time after I made the transfer to Peleg Wilbur, he and Isaac P. Hazard, one of the firm of R. G. Hazard and Co., were at my house, and tried to make some arrangements about restarting the mill again; they had a considerable conversation together. Some two or three months after I made the transfer to Peleg Wilbur, he asked me to show him my contract with R. G. Hazard and Co., and I did so. During the transactions with Peleg Wilbur, I never had any conversation with him about his or my buying the machinery. At the time of the sale of the right of redemption, R. G. Hazard stated that there was a balance due on the contract of R. G. Hazard & Co., and one of the commissioners stated that he thought he understood me to say, at the time of the assignment to them, that there was no lien on the property. I replied that, at the time of the assignment to them, I stated that R. G. Hazard & Co. claimed a balance due them, but the accounts were not settled, and I did not know how it stood—whether there was any or not. The other commissioner said I did state so at the time of the assignment. Peleg Wilbur attended the sale, and was there for the purpose of purchasing. Peleg Wilbur and R. G. Hazard had a considerable conversation together at that time. I did not purposely conceal from Peleg Wilbur that there was a contract between me and R. G. Hazard & Co., or that a claim was made upon said contract. Immediately after the transfer to Peleg Wilbur, he attached some other property before the expiration of the two years mentioned in the contract. I gave notice in writing to R. G. Hazard and Co. and assignees, that I would continue on under the contract. I never asked Peleg Wilbur to go and see Samson Almy on the subject of the purchase of the contract. I don't recollect that I ever asked him to go to see him upon any business relating to the contract. Peleg Wilbur is my brother-in-law. The annexed statement, in my own handwriting, is true.

CHRISTOPHER LIPPITT.

The deponent wishes to say, by way of explanation, that the debts referred to as due Philip Wilbur and others were the debts specified in the deed of conveyance to them.

WASHINGTON, *sc.*

WESTERLY, *August the* 17*th*, 1843.

Then appeared the aforesaid Christopher Lippitt, and gave the aforegoing deposition, which was reduced to writing by me, and subscribed and sworn to by him to be the truth; and at the same time was presented by said Lippitt the statement above referred to, in his own handwriting, which is hereto annexed as a part of this deposition.

JOHN H. CROSS,
Justice of the Peace.

After the failure of R. G. Hazard & Co., the last of May, 1829, they assigned to Thomas R. Hazard and Charles Low. Then Low, and T. R. Hazard, and Low & Fenner (R. G. Hazard was present) tried to get me to give up the contract, saying it was now good for nothing, as R. G. Hazard and Co. could not fulfil it. I replied, then I would buy some cotton and manufacture on my own account. That they did not like I should do. They then put their heads together, and drew up a contract to suit themselves, for me to sign; in which contract Low & Fenner *was* to furnish cotton, and *was* to have 3¼ cts. for manufacturing. I did not like it, and refused to sign it. I then took it and went to some of my friends, and with their assistance drew up such a one as I would sign. I offered to take 3¼ cents in cash, and a ¼ of a cent in part pay towards the machinery; they on their part then refused to sign. They then had a long consultation among themselves; then told me that Low and T. R. Hazard, assignees of R. G. Hazard & Co., would send me some cotton, and commenced furnishing cotton the fore part of June, 1829, and sent me two or three lots, and then refused to send me any more; and also refused to pay me for a lot of goods I sent them, somewhere from the 15th to the 20th of June. The next lot, I sent my son with them, with express orders that, if they would not pay for manufacturing, to store them in Providence till such time as they would pay me. (He did store them.) On the 25th June, 1829, I wrote to Messrs. Chas. Low and Thomas R. Hazard for 15 bales of cotton, and received a letter from Charles Low, in behalf of the assignees, refusing to send me any more cotton.

Somewhere about this time R. G. Hazard wanted to make an alteration in the contract; but, in my letter to him on the 25th of June, 1829, I declined making any alteration. After receiving the letter from Charles Low, one of the assignees of R. G. Hazard & Co., refusing to send me any more cotton, I went and saw Mr. Low. He still declined to furnish cotton; but said they had thought of getting Samson Almy to furnish, and said he would go with me to Mr. Almy's counting-room. Mr. Almy was not in. When we came out, Mr. Low said he was in a hurry; it was about bank time, and must go back; and said: You had better see Mr. Almy, and see if you can't make an arrangement with him. I met Mr. Almy between the market and his

counting-room. I introduced myself, and [illegible] said that Mr. Hazard had said something to him about it, but there was not any thing definite agreed on.

We talked the thing over, and Mr. Almy agreed to furnish cotton; in which arrangement I was to have 3½ cts. for manufacturing—3¼ cts. to be paid me in cash on the delivery of the goods, and the other ¼ of a cent was to apply, with one-half of the profits, towards paying for machinery I had of R. G. Hazard & Co. I had to deviate from the original price for manufacturing, as R. G. Hazard had, in the conversation with Mr. Almy, given him to understand what I had offered to do it for in my proposition to Low & Fenner. Mr. Almy then went with me, selected, and bought a lot of cotton, as per bill 7th July, 1829.

On the 8th or 9th of February, 1830, I was in Providence, as per my memorandum, and at this time the assignees of R. G. Hazard & Co. proposed to sell me the interest they had, as assignees of R. G. Hazard, in that machinery. I then called Mr. Almy one side, and asked him if he would be willing to assume the payment for the balance of that machinery, if I could succeed in buying in their interest; he gave me to understand that he would. I then, on the 15th of February, 1830, wrote R. G. Hazard, advising him that it was better for me to buy in the interest they had in that machinery, if the assignees would sell it for a fair price, considering the price machinery was worth at that time. On the 17th of the same month, I wrote Samson Almy that I wished to make a confidential friend of him to assist me in buying in that machinery. I received a letter from Mr. Almy, dated 23d February, 1830, saying: " shall be willing to render thee all the assistance that I can, in arranging with Hazard's assignees for the machinery in the mill; hoping thee will be able to make an arrangement that will be to thy advantage."

When I was in Providence, a few days previous to the 8th of March, 1830, there seemed to be some disagreeing between them; R. G. Hazard claiming the right to send me cotton, and Low and Fenner also claiming it, and each of them promising to leave word with Mr. Almy. I then left for home, on the promise of R. G. Hazard to send me 8 bales cotton. I received a letter in March, 1830, from Samson Almy, saying: "There is not much prospect of making any arrangement with the assignees, in respect to the machinery in thy mill;" and saying, with the consent of "Hazard, (and Low consented to it a few days since,) sent thee 8 bales of cotton, and shall continue to send it thee;" as I now considered the machinery placed in my hands, by the consent of all concerned. I afterwards learned from Mr. Almy that R. G. Hazard & Co., with the consent of Charles Low, one of the assignees, had placed the contract between me and R. G. Hazard & Co. in his hands, for the purpose of paying a debt that R. G. Hazard & Co. owed Samson Almy.

Deposition of Isaac P. Hazard.

Interrogatories to be propounded to Isaac P. Hazard, on the part of

complainant, to be answered and affirmed to (by consent of parties) before any person authorized to administer an oath; said answers to be used in case in equity in the United States circuit court for the district of Rhode Island, in which Samson Almy is complainant, and Peleg Wilbur is respondent.

1st. Were you one of the firm, R. G. Hazard & Co., of Providence, Rhode Island.

2d. Did you go to Jewett City in December, 1835? If so, state the occasion and circumstances under which you went, and what conversation you there had with Peleg Wilbur, and with Christopher Lippitt in relation to the contract between R. G. Hazard & Co. and Christopher Lippitt, and the machinery spoken of in said contract.

3d. Did the said Wilbur and said Lippitt, or either of them, state to you the immediate cause of said Lippitt's failure? If so, tell what it was attributed to of them.

4th. What did the said Peleg Wilbur say, as to the terms of the contract of R. G. Hazard & Co. with Christopher Lippitt, and the claim to the machinery by S. Almy, as the holder of mill contract by purchase of assignees of R. G. Hazard & Co.?

5th. Had you conversation at other times with said Wilbur, in relation to the mill contract and machinery? If so, state said conversation.

Cross interrogatories to be propounded to Isaac P. Hazard, on the part of the defendant, to be used in the suit in equity, Samson Almy vs. Peleg Wilbur, now pending in the United States circuit court, in and for the district of Rhode Island.

The defendant reserves all objections to the competency of said Isaac P. Hazard, as a witness in the cause.

1st cross interrogatory. Have you or not received or seen a letter, or letters from Rowland G. Hazard, or any other person, during your present absence from the State, in relation to giving your testimony in this case? If so, did not said Rowland G. Hazard, or other person, furnish you in said letter or letters with data in facts or suggestions in relation to the same?

2d. If you went to Jewett City in December, A. D. 1835, as asked in second direct interrogatory, what day in said month did you go there? State the day as nearly as you can, and how long you remained there.

3d. If you had any conversation with said Lippitt or Wilbur at that time as to said contract, who was present at the time of said conversation? State particularly.

4th. Was said conversation (if any) at Jewett City, referred to in second direct interrogatory, before or after said Lippitt's failure?

5th. If you had other conversation with said Wilbur at other times, or to said contract as referred to in fifth direct interrogatory, when and where were said conversations had, and who was present at said conversation? Please state particularly.

Deposition of Isaac P. Hazard.

Who being duly affirmed according to law, and examined on the

twenty-third day of May, in the year of [illegible] one thousand eight hundred and forty-five, at the office of Joshua Mitchell, one of the aldermen and ex officio a justice of the peace in and for the city of Philadelphia, No. 17, North Sixth street, in said city, by virtue of a commission, by consent of parties, in a case to be heard in equity in the United States circuit court, for the district of Rhode Island, in which Samson Almy is complainant, and Peleg Wilbur is respondent. Taken before and by Joshua Mitchell aforesaid.

Isaac P. Hazard, aged 50 years, a resident of Peace Dale, Rhode Island, being produced, and being first affirmed according to law, deposeth and saith, in answer to interrogatories propounded to him in behalf of the complainant:

To the first interrogatory the deponent answers: Yes.

To the second interrogatory deponent answers, on the part of the complainant: I went to Jewett City about the middle of December, 1835, to see Christopher Lippitt, having heard he had stopped his factory and probably assigned his property. I met Peleg Wilbur in Providence, who agreed to meet me there, which he did. I started from Providence the Monday previous to the 18th December. Peleg Wilbur offered to carry me up in his gig, if I would wait until next day, but the roads being bad concluded it was best to go in the stage, and he came up next day. My object was to examine into Christopher Lippitt's affairs, and if possible get him started again in business; and we, Christopher Lippitt, Peleg Wilbur, and myself, had much conversation together on the subject. I learned Christopher Lippitt had mortgaged his property to his son and Peleg Wilbur, and that several attachments had been made. Christopher Lippitt had been manufacturing cotton on machinery furnished him by R. G. Hazard & Co. on contract; which contract had been assigned to Samson Almy; and I proposed said Almy should again furnish said C. Lippitt with cotton, and pay him 3½ cents per yard for manufacturing, as had before been done. This Christopher Lippitt said was just, if it was possible, or if he had not failed; but under this arrangement he must go deeper and deeper in debt, as interest money had long been accumulating against him. He said he would receive cotton at 3½ cents per yard for manufacturing, and let half the profits go towards the machinery. I answered I had no power to act, nor would I take any; that I had come to see him for his benefit, as well as the parties interested in the machinery, and my principal object was to get him started, as idleness hung very heavy on him and depressed his spirits; that the three and a half cents would pay more than his expenses and support his family, and when the machinery was paid for there would be so much more property towards securing his son and brother-in-law for the sum they were responsible for. We had much conversation on the subject, and Peleg Wilbur observed, it would be best to start the mill if S. Almy would furnish the cotton, and leave any alteration in the contract for future negotiation. While conversing about the contract Christopher Lippitt had with R. G. Hazard & Co., Peleg Wilbur asked me, "what part of the machinery Major Lippitt would own, if any or not, as he (Major L.) had

the numerous creditors he feared it might [illegible] obligation to take the whole of it." I left Peleg Wilbur and Christopher Lippitt together, late on Wednesday evening, hoping they would arrange to start the factory on the proposed terms, and at about nine o'clock that night I took the stage for Norwich on my way home.

To the third interrogatory deponent answers on part of complainant: On my arrival in Providence the Saturday previous to my going to Jewett City, I learned from Samson Almy that Christopher Lippitt had become alarmed at my brother, Rowland G. Hazard's, suddenly leaving Jewett City, after his late visit there in the night for Norwich, (which he did to avail himself of a ride home in the mail wagon, which he found late in the evening was to leave Norwich next morning for Kingston,) and not being able to account for it in any other way than that it was to take legal steps towards securing the amount due on the contract with R. G. Hazard & Co., had stopped his factory and probably assigned. As I felt much hurt at the construction Mr. L's embarrassed situation had predisposed him to draw at my brother's energetic and untiring movements in the prosecution of his business, and who was then far on his way to New Orleans, and who I knew had gone to Jewett City to try to alleviate rather than embarrass Mr. Lippitt, I determined to go immediately and see him, and as far as in my power to make amends for the misfortune my brother's sudden departure had innocently been the cause of. Mr. Lippitt admitted my brother's rapid movements, and to him inexplicable departure at night for Norwich, had been the immediate cause of his failure; but on my asking him if he had ever known any thing of us that would warrant the conclusion he had come to, said he had no right to expect any such movement as he had feared, but being very much embarrassed from having purchased and contracted to pay for a water-privilege, more expensive and larger than he was able to occupy, (sufficient to turn two thousand spindles, but had only started eight hundred and sixty-four,) interest on the debt had so embarrassed him as to affect his spirits and nerves, and caused the unfortunate conclusion and movement which had just occurred. From all I could learn, Mr. Lippitt was much embarrassed, and without further aid must soon have stopped, if my brother had not gone there. Peleg Wilbur was frequently, and I think, generally present at our conferences, and both of us endeavored to encourage him, the said Lippitt.

To the fourth interrogatory deponent answers on part of complainant: I only recollect his asking me what part Major Lippitt would own, if any or not, as he had paid for part of the machinery under the contract, as before stated in answer to the second interrogatory. We frequently conversed about C. Lippitt's business, but my recollection about it is not sufficiently distinct to state now, having no record of it, but the substance of the foregoing answers were committed to writing and forwarded to my brother at New Orleans, immediately after my return from Jewett City, and intended to give him the exact statement of the whole transaction, which letter I have now with me. I distinctly re-

collect I took care to relate every thing as [illegible] mory, and but for which I should not [illegible] ing statements.

To the fifth interrogatory deponent answers on part of complainants: I have no distinct recollection of the conversation we had together, but doubt not we had, as we occasionally met, as I believe, both felt interested in Mr. Lippitt's affairs. About the fourth of March, 1836, Samson Almy informed me C. Lippitt had received no cotton from him, and that Peleg Wilbur had been there proposing to purchase his right in the machinery, at Jewett City, which I communicated to my brother at New Orleans, under date of March 5th, 1836.

ISAAC PEACE HAZARD.

Affirmed and subscribed, May 23d, 1835, before me,

J. MITCHELL, *Alderman, &c.*

Cross interrogatories on the part of the respondent, taken at the same time and place as the above and foregoing, and before Joshua Mitchell, alderman, &c., aforesaid.

Isaac P. Hazard, aged 50 years, a resident of Peace Dale, Rhode Island, being produced, and being first duly affirmed according to law, deposeth and saith, in answer to interrogatories propounded to him on behalf of the respondent.

To the first cross interrogatory deponent answers, on part of respondent: While at Warrenton, Virginia, a few weeks ago, I received a letter from R. G. Hazard, saying, my deposition would soon be wanted in the case of S. Almy and Peleg Wilbur, and if I was not going to return immediately, he would send a commission to any magistrate to take it, and wished to know when they would meet me. I wrote him in reply, I expected to be in Philadelphia soon, and should want a letter or letters I had written to him at New Orleans before I gave my deposition, as that letter contained many facts written down when they were distinctly in my memory. On arriving here yesterday, I found the interrogatories alluded to, enclosed to my brother, requesting I would answer them as soon as convenient, and forward them without delay. He also requested to know if I recollected being present when the negotiation was making with Low and Fenner about the stocking the mill, &c., at Jewett City, and remembered any thing then material in the case. These, with two small notes not alluding to the case, are all the letters I have received since I left Rhode Island, nor have I, to my recollection, received any communication, or made any, to or from any one since I left, or for a long time before, other than those alluded to above.

I also found the old letters I had requested forwarded, and which I distinctly remember to have written with no other view than to give my brother an exact account of the transaction, as far as I was capable of, and which I have used in giving the deposition enclosed herewith, and have not relied on my memory alone.

To the second cross interrogatory deponent answers for respondent: On referring to the letter written to R. G. Hazard, in New Orleans,

giving an account of the transactions that occurred the week after my visit, including my visit to Jewett City, I find it stated that I returned from Boston to Providence on Saturday, about the twelfth day of December, when I heard of C. Lippitt's having stopped his mill, took the stage to Jewett City, Monday, remained there until about 9 o'clock, Wednesday night, when I got into the Worcester stage coach, on its way to Norwich, where I arrived at the "Franklin House," I think between 10 and 11 o'clock at night, and where my name will probably be found, entered under date of 16th or 17th December, 1835. In the morning I got into Babcock's mail wagon and rode to Kingston, and it is strongly impressed on my memory, that while I was riding from Jewett City to Norwich, (an intensely cold night,) the great fire, as I afterwards understood, was raging in New York, but I have no documents to refer to, as to when the fire occurred, and may or may not, be exactly correct; from this statement I was in Jewett City about two days and a half.

To the third cross interrogatory deponent answers, for respondent: I find no allusion in the letter before referred to, as to any one being present while we were endeavoring to arrange the matter. I conversed with Christopher Lippitt and Mr. Wilbur together and separately, and they with each other. I remember once the subject was mentioned at dinner table at Mr. Lippitt's house, when Mrs. Lippitt was present, probably Mr. Lippit's son was then present, and at other times, but I have no distinct recollection of it.

To the fourth cross interrogatory on part of respondent, deponent answers: As before stated, I went to Jewett city, because I heard Mr. Lippitt had stopped his mill. It was alluded to by him as a failure, while I was there.

To the fifth cross interrogatory on part of respondent, deponent answers: I recollect none with sufficient accuracy to state.

ISAAC PEACE HAZARD.

Affirmed and subscribed May 24th, 1845, before me,

J. MITCHELL, *Ald., &c.*

STATE OF PENNSYLVANIA,
City of Philadelphia, ss.

I, Joshua Mitchell, one of the acting aldermen, and ex-officio a justice of the peace in and for said city, do hereby certify, that the above named Isaac P. Hazard was by me duly affirmed according to law, to testify the truth, the whole truth, and nothing but the truth, in answering the interrogatories propounded, and that the foregoing depositions and answers *was* by him subscribed in my presence, and were reduced to writing by myself, and taken by me at my office, No. 17, North 6th street, Philadelphia, on the 23d day of May, A. D. 1845.

In testimony whereof I have hereunto set my hand and seal, May 23d, 1845.

JOSHUA MITCHELL, *Alderman, &c.*

I. P. Hazard paid magistrate fees, $5 00.

At the November term, A. D. 1845, the [illegible] amended answer to his bill:

RHODE ISLAND DISTRICT, *ss.*

Circuit court United States, in case in equity.

SAMSON ALMY }
vs. }
PELEG WILBUR. }

Amendment to the answer and amended answer of the defendant in said case.

And the said defendant here by the leave of the court states, that at the time he made his said answer and amended answer to the complainant's bill of complaint, he had not in his possession the paper hereunto annexed, and that the statements contained in said answer and amended answer were made according to the best of this defendant's recollection, knowledge, and belief; and that this def't did not recollect whether, what is contained in the annexed paper was a verbal understanding or in writing; that this def't then, since said answer and amended answer, went to John W. Fanning at Jewett city, Connecticut, to find the annexed paper, and said Fanning on being enjoined of stated, that he recollected no such paper, but that Mr. Morgan had the papers; that def't then went to see said Morgan at Norwich, and after much search found the annexed paper, which the def't herewith produces.

PELEG WILBUR.

RHODE ISLAND DISTRICT, *ss.*

Providence, November 12th, 1845.

Then personally appeared the within named def't and made oath, that the facts and statements contained in the within amendment to his answer and amended answer in said case are true, according to the best of his knowledge, recollection, and belief.

Sworn to before me,

SAMUEL W. PECKHAM,
Comm'r of the circuit court of U. S. for said dis't.

Paper referred to in foregoing amendment.

Know all persons to whom these presents shall come, that we, Peleg Wilbur, Thomas B. Wilbur, Oliver C. Wilbur, the President, Directors, and Company of the Bank of Kent, county of Kent, State of Rhode Island, William Lippitt, Caleb Congdon of Cranston, Christopher H. Lippitt of Providence, Providence county, in said State, and Mathew G. Wilbur of Richmond, county of Washington, in said State, for the consideration of twenty-one hundred and three $\frac{44}{100}$ dollars, received to our full satisfaction of Samuel C. Morgan and John W. Fanning of Griswold, in New London county, in the State of Connecticut, have bargained and sold, and by these presents do bargain, sell, and convey, to the said Morgan & Fanning, the following machinery, tools, &c., in and belonging to the cotton factory formerly owned by Chris-

Jewett City, in said Griswold, consisting of two hundred and sixteen spindles each, Field's speeders, one Taunton speeder, fourteen cards, one warping machine, twenty looms, one dressing machine, one spooling machine, one turning engine, one cutting engine, two turning lathes; also, the cans, spools, bobbins, and all the tools, loom beams and dresser beams, in or belonging to said factory; also one cotton whipper and picker in the picker house, to have and to hold the aforesaid property unto the said Morgan & Fanning forever, without any claim or demand from us or any of us; and we, the aforesaid vendors, do for ourselves, our executors, and administrators, and the successors of said President, Directors, and Company of said bank, covenant and agree, to and with the said Morgan & Fanning, their executors, administrators, and assigns, to indemnify them, the said Morgan & Fanning, against the legal claim and demand of any other person or persons to the aforesaid property, or any part thereof, in the proportion that the sum herein paid by the said Morgan & Fanning bear to the sum of three thousand and fifty-three dollars, the whole sum paid by the said Morgan & Fanning for the aforesaid machinery, tools, &c., including the sum paid the Norwich, Jewett City and Windham County Bank. And it is understood that the obligors are in no event to pay back to the said Morgan & Fanning any more than the amount of the consideration money herein specified, with the interest thereon, from the time there be any claim legally established to said property, or any part thereof.

In witness whereof we hereunto set our hands and seals this 1st day of December, 1837.

Signed, PELEG WILBUR, for self, and Att'y for Thomas B. Wilbur,
CHRISTOPHER H. LIPPITT,
OLIVER C. WILBUR,
MATHEW G. WILBUR,
WILLIAM LIPPITT,
CALEB CONGDON,
President, Directors, and Co. of the Bank of Kent.

In presence of—
Signed, HENRY MARVETT,
SAMUEL BUTTON.

And at the November term, 1846, was entered the following:

Decree.

RHODE ISLAND DISTRICT.

Circuit court, November term, 1846.

In this case, having examined the bill, and answers and evidence, and heard the counsel of the parties: On consideration, therefore, the court adjudge and decree, that the contract set out as between Lippitt and Hazard & Co., is to be treated in equity as a mortgage from Lippitt to them, and was not fraudulent between them. That the interests

of Hazard & Co. are rightfully in the co[illegible] pondent took a conveyance of the machin[illegible] the rights of the complainant and the hazards thereto, and was not misled or deceived by their acts. That he is liable to redeem the same and pay the balance due on the original mortgage, or deliver to the pl'ff. the said machinery; and that if said machinery is lost or destroyed, the respondent must pay the value thereof, unless his interest or control over the same extended to only a part thereof; that the statute of limitation is not sustained so as to bar the complainant's rights.

That John P. Knowles be appointed a master in chancery, to ascertain the balance now due to the pl'ff, allowing interest since September, 1832, and to ascertain the value of the machinery when converted by Wilbur, charging interest thereon since; and to report Wilbur's interest or control over the same, and his receipts therefor, with the dates.

That said master have power to examine witnesses and the parties under oath, and to see their books and papers, and do all other things in the premises which properly appertain to a master; and that all other orders and decrees be reserved till the master make a report.

LEVI WOODBURY,
Ass. Jus. of Sup. Ct.

Entered by order of court, as the decree thereof.
Attest: JOHN. T. PITMAN, *Clerk.*

And at the June term, 1847, was entered the following:

Addition to decree.

And that the master ascertain and report the amount of damages sustained by Christopher Lippitt, if any, by the non-performance, by Hazard & Company, of their contract of March 7, 1828; and also the damages, if any, sustained by the pl'ff by the non-performance of said contract by said Lippitt; and also the damages, if any, sustained by Lippitt aforesaid; and by Wilbur, by non-performance of the contract in the pleadings mentioned, between the pl'ff and the def't.

To be added to decree in bill in equity, Samson Almy vs. Peleg Wilbur.

J. WHIPPLE, *for Plaintiff.*
W. U. POTTER, *for Wilbur.*

June term, 1847.

Entered by order of circuit court as the decree thereof.
Attest: JOHN T. PITMAN, *Clerk.*

Commission to master.

RHODE ISLAND DISTRICT, *sc.*

The President of the United States, to John P. Knowles, of Providence, in said Rhode Island district, esquire, greeting:
[L. S.]

Whereas at our circuit court of the United States, for the first circuit, for the Rhode Island district, holden at Newport, on the fifteenth day

...ere, on the agreement of parties, appointed ... examine, ascertain, and report upon cer... matters stated and set forth in a certain decree, made at the November term, 1846, of said court, and also in an addition to said decree, to copies of which, under the seal of the court, reference is had for more particular detail, in a certain bill in equity now pending in said court, wherein Samson Almy, of Plainfield, in the district of Connecticut, is complainant, and Peleg Wilbur, of Coventry, in said Rhode Island district, is respondent.

You are hereby, therefore, authorized and empowered (being first duly sworn) to notify the parties of the time and place you shall appoint for the hearing of said matters, and proceed to execute the duties of your said appointment, and your report make to our said court as soon as may be; and if either party, after being duly notified, refuse or neglect to attend, you are hereby further authorized to proceed, *ex parte*, and your report make accordingly. Hereof fail not.

Witness the honorable Roger B. Taney, our chief justice, at Providence, this thirtieth day of October, A. D. 1847.

JOHN T. PITMAN, *Clerk*.

RHODE ISLAND DISTRICT, *sc.*

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, October 30th, 1847.

Then personally appeared before me the within named John P. Knowles, and made oath that he would faithfully and impartially discharge the duties of his said appointment according to the best of his skill and understanding.

JOHN T. PITMAN, *Clerk*.

RHODE ISLAND DISTRICT, *sc.*

CIRCUIT COURT, *November term*, 1846.

In equity—Samson Almy vs. Peleg Wilbur.

In this case, having examined the bill, answer, and evidence, and heard the counsel of the parties: On consideration, therefore, the court adjudge and decree, that the contract set out as between Lippitt & Hazard & Company, is to be treated in equity as a mortgage from Lippitt to them, and was not fraudulent between them. That the interests of Hazard & Company are rightfully in the complainants, and that the respondent took a conveyance of the machinery mortgaged, with notice of the right of the complainant and the Hazards thereto, and was not misled or deceived by their acts. That he is liable to redeem the same and pay the balance due on the original mortgage, or deliver to the plaintiff the said machinery; and that if said machinery is lost or destroyed, the respondent must pay the value thereof, unless his interest or control over the same extended to only a part thereof. That the statute of limitations is not sustained so as to bar the complainants' rights.

That John P. Knowles be appointed a master in chancery to ascer-

tain the balance now due to the plaintiffs, [illegible] tember, 1838, and to ascertain the value of the [illegible] verted by Wilbur, charging interest thereon since, and to report Wilbur's interest or control over the same, and his receipts therefor, with the dates.

That said master have power to examine witnesses, and the parties under oath, and to see their books and papers, and do all other things in the premises which properly appertain to a master.

And that all other orders and decrees be reserved till the master make a report.

LEVI WOODBURY,
Ass. Jus. of Sup. Ct.

Entered by order of court as the decree thereof.
Attest: JOHN T. PITMAN, *Clerk.*

And that the master ascertain and report the amount of damages sustained by Christopher Lippitt, if any, by the non-performance, by Hazard & Company, of their contract of March 7th, 1828; and also the damages, if any, sustained by the plaintiff by the non-performance of said contract by said Lippitt; and also the damages, if any, sustained by Lippitt aforesaid, and by Wilbur, by non-performance of the contract in the pleadings mentioned between the plaintiff and the defendant.

To be added to decree in bill in equity, Samson Almy vs. Peleg Wilbur.

JOHN WHIPPLE, *for Pl'ff.*
WM. H. POTTER, *for Wilbur.*

June term, 1847.

Entered by order of circuit court as the decree thereof.
Attest: JOHN T. PITMAN, *Clerk.*

UNITED STATES OF AMERICA,
Rhode Island district, ss.

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, October 30th, 1847.

I, John T. Pitman, clerk of said court for said district, do hereby certify that the foregoing two pages contain a true copy of the original decree of said court, and the addition thereto in the case Samson Almy vs. Peleg Wilbur, now on file in this office, duly examined and compared.

In testimony whereof I have hereunto set my hand and the seal of said court, on the day and year above written.
[SEAL.]
JOHN T. PITMAN, *Clerk.*

Master's report.

To the honorable the circuit court of the United States, at its November term, A. D. 1848.

The undersigned, by a commission from this honorable court, ap-

...cause, in compliance with a request and ...ion of the respondent, made on the 11th of November inst., would ...respectfully state and report:

That the opening of the complainant upon the points of inquiry before the master was closed on the 6th of June last, at noon; and that on the afternoon of the same day the respondent commenced his opening, examining three witnesses; on the forenoon of the 7th of June, examining two witnesses; and on the afternoon of the 7th, examining one witness; and moving, through his counsel, that the master examine him, the respondent, upon five certain interrogatories hereto annexed, (marked A,) urging, as a principal reason for the motion, that the answer of the respondent, it had been ascertained on the 19th of May, was erroneous in a certain particular named. That this motion, the complainant opposing it, was on the day following (June 8) overruled by the master, he holding that the respondent could not of right claim to be examined upon the proposed interrogatories; and that, as the cause then stood, there existed no reason for an examination by the master, as of his own motion, under the discretionary power, in that particular, with which he considered himself vested, both by the general rules of the court and the decree in this cause.

That at the same meeting, June 8th, the counsel for the complainant, for the first time, objected to the testimony offered, because inconsistent with the answer of the respondent; he then objected to the reception of certain letters produced by the witness, Harris, if offered to disprove possession and control of the property in question by the respondent.

That after the afternoon of June 8th, there was no proceedings in said cause before the master, until the morning of Sept. 14th, when the respondent resumed his opening and examined three witnesses. That the afternoon of the 14th and the whole of the 15th of September were spent in taking the testimony of witnesses of the respondent, and the examination of the complainant, taken by the master upon the motion of the respondent upon interrogatories prepared by the respondent's counsel.

That on the 16th of September the counsel for the respondent resumed his motion for the examination of the respondent upon the interrogatories aforesaid; upon which motion the master declined giving a final decision until certain depositions, which the parties respectively intended taking in the district of Connecticut, should be returned and examined by him.

That the said depositions were returned to the master on the 27th of September, and that on the 3d of October he announced to the parties his decision not to examine the respondent upon the interrogatories aforesaid.

That on account of the official engagements of the Hon. Richard W. Greene, of counsel for the respondent, no further proceedings were had on the cause until November 1st, when the complainant moved that the master order the respondent to close his defence; and the respondent asked that he be allowed an opportunity to apply to the circuit judge at

chambers for further directions to the mas[illegible] nation of the respondent. That in accordance with this request of the respondent, the further hearing of the cause was deferred until Friday evening, Nov. 3d, at 7 o'clock, at which time the parties appeared; when Mr. Potter, of counsel for respondent stated, that until he should see his colleague, Mr. Greene, he should be unprepared either to proceed with the cause before the master, or to state what course the respondent would adopt under the circumstances.

That thereupon the further hearing of the cause was postponed until the next day at 12 o'clock, m., when, it appearing that Mr. Greene was absent from the city not to return until Monday, the hearing was further postponed until Tuesday, Nov. 7th, at 12 o'clock, m.

That on Tuesday, at the hour appointed, Mr. Potter appeared before the master, and moved that proceedings before the master be suspended for the present, to afford the respondent an opportunity to apply to the court in term time to set aside the decree in this cause and to amend the respondent's answer; which motion, no one appearing for the complainant to oppose, was allowed, and the further hearing postponed until the call of the master.

That about two o'clock of the same day he received a communication respecting the cause, which he immediately exhibited to Mr. Potter and Mr. Whipple, whom he met on their way to the cars to attend the court of common pleas in Washington county, with whom he arranged to meet him on their return from South Kingston.

That after their return on Saturday, November 11, at 4 o'clock, Mr. Whipple for the complainant, and Messrs. Greene & Potter for respondent, appeared before him, pursuant to appointment. Mr. Whipple moving that the hearing of the cause be resumed and completed, and the master's report be made up and rendered to the court at its November term, if possible; Messrs. Greene & Potter moved and requested that the hearing be suspended, and that the master report to the court on the 15th inst. the position of the cause before him, in order that they, on behalf of the respondent, might apply in term time for that relief which they had ascertained could not be granted in vacation; and maintaining, that owing to their engagements in the supreme court on Monday and Tuesday, they could not attend before the master on those days, and that therefore no report in full could be prepared in season for final action upon it by the court at the coming term; and further, that by adopting the course proposed by them, probably, or at least possibly, a final disposition of the cause would be accelerated.

Whereupon, it appearing to the master impracticable fully to hear the cause, and report thereon at the November term of the court, and therefore that to accede to the wish of the respondent involved in fact no delay of the proceedings before him, the motion of the respondent's counsel was allowed to prevail, and the further hearing of the cause was postponed (subject, of course, to any order of the court in the premises) until the call of the master.

And further, the undersigned would state that, under the circum-

party contending that thereby the progress ... a final decree would be greatly facilitated, he deemed it not improper to make this partial report; to which it seems essential only to add that, aside from the proposed examination of the respondent, the evidence in the cause is closed, and that, preparatory to making up and rendering a full report under his commission, he waits but to be favored with the closing arguments of the learned counsel of the parties.

JOHN P. KNOWLES, *Master*.

PROVIDENCE, Nov. 14, 1848.

A.

Interrogatories to be propounded to Peleg Wilbur before John P. Knowles., esq., master, in suit in equity, S. Almy vs. Peleg Wilbur.

Int. 1. Did you have possession of the machinery mentioned in your mortgage of December 8, 1835, after said time; and if so, how long, and what was the character of such possession?

2. If you so had possession of said machinery, how long did you have possession of it; and who took possession of it next after you, and how long did the person who took it after you continue in the possession of the same?

3. Was the possession of the person who took it next after you under a lease in writing or not? If so, please state its date, parties, terms, and what you know about it.

4. Please state particularly what you know about the possession of said machinery from December 8, 1835, to March 7, 1837; who had it from time to time, and the character of that possession.

5. In your first answer, page 38, you state you claimed possession; in page 80 you ask Mr. Bailey if, at the time he made demand on you for said machinery, November 25, '36, he, Wilbur, did not state he claimed possession, but other persons had actual possession of it, (Hazard also admits to it, p. 87;) you state, p. 43, amended answer, you had actual possession of said machinery during said time; please explain how said statement last mentioned occurred.

And at the November term, A. D. 1848, a decretal order was passed, upon, and pursuant to which was issued the following

Order from court to master.

RHODE ISLAND DISTRICT:

[SEAL] To John P. Knowles, of Providence, in said district, esquire, master in the cause in equity, Samson Almy vs. Peleg Wilbur, now pending in our circuit court for said district, greeting:

At a circuit court of the United States, for said district, holden at Providence, on the 15th day of November, A. D. 1848, the following was ordered to be entered as an order of the court:

Let the master proceed and finish his inquiries, and report under his original instructions unchanged. After his report is completed, and the questions further examined which have been now argued, the court

will decide on them, and whether the rep... any purpose or not, or any amendment be allowed in the case.

Of which said order you will take notice, and govern yourself accordingly.

Witness the Hon. Roger B. Taney, our chief justice at Providence, this sixth day of February, A. D. 1849.

JOHN T. PITMAN, *Clerk.*

And the case being continued to the June term of said court, 1849, the following motion to correct mistake, &c., and also a motion of respondent to be allowed to swear before the master upon argument before court, was disallowed:

Affidavit presented with following motion.

About the time Christopher Lippitt gave the mortgage to Peleg Wilbur and others, December 8, 1835, all the property of said Lippitt, real and personal, was attached, including the stock of cotton in the mill in the different stages of manufacture.

I, Peleg Wilbur, receipted to the sheriff for the said stock in progress of manufacture, which was estimated at a certain value then agreed upon, and took possession of the mill and machinery to protect it from other attachment by said Lippitt's creditors, for which I had receipted, in order to run out the same, to make all the saving possible for the benefit of Mr. Lippitt as his friend, and for no other purpose.

I continued in possession of the mill and machinery till spring of 1836, in hopes Lippitt would make some arrangement with his creditors; but seeing no prospect of his doing so, I gave him notice that I would not continue to furnish the mill, and in the spring of 1836 did give up possession to Mr. Lippitt, who then owned the equity of redemption, in the same manner I had received it from him. He made a contract with William J. Harris to furnish stock to be manufactured, which continued about one year; and Lippitt's son, C. H. Lippitt, made a contract with Joshua Fenner to run the mill for the benefit of his father.

Lippitt gave Fenner possession of the mill and machinery which he held till about the month of August, 1836, about four months, when Lippitt again resumed the possession.

On the 27th day of October, 1836, Lippitt gave possession of the mill and machinery to John W. Fanning, the owner in equity, who had purchased Lippitt's interest, or the right of redemption in all his estate, real and personal, including the mill and said machinery of the assignees of said Lippitt, at a public sale; he, Lippitt, taking back from said Fanning a lease of the mill and machinery for the term of one month, bearing date October 27th, 1836, and held possession of the same till March following, 1837.

On the 25th day of November following, 1836, before the expiration of said lease, a demand was made on me by Mr. Almy's clerk, Samuel Bailey.

... Fanning turned Lippitt out of possession, ... on a prior mortgage.

December 1st, 1837, I sold my interest in the said mortgage to Morgan & Fannin, and gave them a release for myself and part of the other co-mortgagees, for whom I acted as attorney, and who lived in this State.

I received no profits from the business while I had possession and furnished the mill, and had no interest in, or profits from, it after. I have not received, or ever expect to receive, directly or indirectly, one cent of the profits, or any thing for my services, from Lippitt or any one else, nor any compensation for my services as attorney for the other mortgagees for whom I acted, or for any personal expenses.

My services were rendered as a friend to Mr. Lippitt, and for his benefit, who married my only sister.

When Morgan & Fanning bought our interest in the mortgage, they required of us an account for the rents and profits, as mortgagees, from the time we took possession, December 8, 1835. The rent and profit to be charged me and other co-mortgagees, as agreed on at the time, was $800. Said Fanning then also claimed rent of said Lippitt for said mill and machinery, from the time said Fanning leased them to said Lippitt, October 27, 1836; and it was agreed that the sum of $200 should be by him paid for that time. Said $800 was paid by said Lippitt to me and other mortgagees, and by us deducted from said mortgage; and $200 was paid by said Lippitt to me, by assent and direction of said Fanning, and deducted also from said mortgage; which, with $40 interest accruing on said $800 and $200, made $1,040 to be deducted from said mortgage, and which was made a part of the consideration in Morgan & Fanning's purchase.

The foregoing is the statement of facts which I made to my counsel before my first written answer was made out. The amendment to my first answer was made, as I understood, for the purpose of setting up the statute of limitation of Connecticut, and their statute in relation to recording mortgages or possession of personal property; that, when said amendment to my first answer was drawn up, Mr. Potter read it to the other counsellors, A. C. Greene & R. W. Greene, in my presence, as I understood, for the purpose of having them see if he had stated those legal points correctly. I signed it on merely hearing it read by Mr. Potter, without noticing the statement in relation to possession, it all being hurriedly done in his office; that, in the amendment, I am made to say that I took actual possession of said machinery December 8, 1835, and retained it till March 7, 1837.

On the trial of this case before the master some question was asked about the possession, when Mr. Potter adverted to the printed answer, and read the above. I immediately told him that was not correct; he then shew me the book; I told him it was not true, and was not a little surprised to find it there so stated; which was the first knowledge I had that my answer contained such a statement.

I further state that, since the trial of said case before this court, and recently, I have discovered and learned that there was a dispute between

Low & Fenner and R. G. Hazard & Co. [illegible] Co. and R. G. Hazard & Co., in relation to [illegible] other things,) which was referred to referees to decide; and said referees did decide in relation to the ownership by said Hazard & Co. in said machinery, as appears by their report therein, which was established by the supreme court of this State. A certified copy of this report is before the master in this case, and hereby referred to for facts and particulars, and made part hereof.

PELEG WILBUR.

November term, 1848, 11th day.

Sworn to before court.

JOHN T. PITMAN, *Clerk.*

Motion.

To the honorable U. S. circuit court for the Rhode Island district.

NOVEMBER TERM, 1848.

Peleg Wilbur, defendant in above suit, asks leave of, and moves the honorable court to correct a mistake of dates, made in the amendment to his answer in said case, (printed copy, page 43,) where he is made by said answer to say that he retained possession of said machinery, &c., till March 7, 1837; and also prays your honor to pass an order, directed to John P. Knowles, esq., master in said suit, to examine the defendant in relation to said mistake, and the manner in which it occurred; also in relation to the possession of said machinery during years 1836, 1837, and the character of that possession; and generally in relation to said case; and for reasons therefor refers to affidavit and statement herewith presented.

PELEG WILBUR.

Petition for commission.

The undersigned hereby certifies that, on motion of the respondent in said cause, he has ordered to be taken the deposition of Christopher H. Lippitt, now of Wilmington, in the State of North Carolina, upon interrogatories and cross interrogatories hereto appended; the same to be taken under a commission, to be issued from the clerk's office of the circuit court, to any judge, justice of the peace, notary public, or other person by the laws of North Carolina authorized to take depositions, and to be by said officer returned, as soon as may be by mail or express, under seal to the address of John P. Knowles, master in chancery, Providence, R. I. Witness my hand, at Providence, this 8th day of February, A. D. 1849.

JOHN P. KNOWLES,
Master in said cause.

To JOHN T. PITMAN, esq.,
Clerk of the circuit court of the U. S.
February 9, 1848.

Let the above commission issue as required.

JOHN PITMAN, *District judge.*

And [illegible] ed accordingly.

And at the same June term, 1849, the master's report was filed in the words following, to wit:

Master's report.

In chancery. To the honorable the circuit court of the United States, in session in and for the Rhode Island district.

JUNE TERM, A. D. 1849.

In pursuance of a decretal order of the honorable court, at its June term, 1847, in the cause [of] Samson Almy vs. Peleg Wilbur, I, the subscriber, having been duly engaged upon the commission herewith returned, and having been attended at many times by counsel for the parties, and by the parties themselves; and having examined the evidence taken in chief in said cause, and taken the testimony of many witnesses produced before me, and caused to be taken the depositions of four witnesses residing out of the district, upon the matters directed to be inquired into by said order, and duly considered the same; and having also duly considered the objections, by the said parties respectively made, to a draft of a report by me submitted to them, now present this my report upon the six several inquiries by said order directed.

The first inquiry is, "The balance now due to the plaintiff, allowing interest since September, 1832."

I conceive the object of this inquiry to be the ascertainment of the balance due the plaintiff, regarding him as the successor or assignee to all intents of Hazard & Co., under the contract of March 7, 1828, between that firm and Christopher Lippitt, and that I therefore am to take into view as well the dealings between Lippitt and Hazard & Co., as the dealings after the failure of H. & Co. between the plaintiff and said Lippitt. Proceeding upon this assumption, I find and report the balance inquired for to be (computing interest to the 15th day of June, 1849,) the sum of ten thousand five hundred and sixty-seven dollars, ($10,567 00,) as shown by the statement following, viz:

Amount found by me to have been paid for machinery by Hazard & Co. - - - - -	$9,567 98
Amount paid for a speeder by Almy - - -	550 00
Making machinery debtor to plaintiff - - -	$10,117 98
Amount of half profits credited to machinery by Hazard & Co. and their assignees, with interest to Sept. 30, 1832, as per contract, (computed by defendant himself, $770 41; amount of half profits credited to machinery by plaintiff, including $258 98; the amount of the reserved ¼ of a cent of the cash price for manufacturing, (computed by the defendant himself,) with interest to September 30, 1832, $4,070 96; making Almy debtor to machinery - - - -	4,841 37

Which being deducted from the above sum [illegible] shows the balance due from machinery to Almy, Sept. 30, 1832, to be - - - - - - -	$5,276 61
Add to which interest to June 15, 1849, 16 yrs. 8 mos. 15 days - - - - - - -	5,290 39
The total is as above - - - - -	$10,567 00

It is, however, proper in this connexion to say, that if from the amount paid by Hazard & Co. for machinery, as above found, $9,567 98, a deduction should, for the purpose of this inquiry, be made of the costs of such portions of the said machinery as were not embraced in the mortgage to the defendant, (a question which is respectfully submitted to the consideration of the honorable court,) then the balance, as above stated, should be reduced by deducting therefrom the sum of $700, and interest on the same from Sept. 30, 1832, in which event the balance would be the sum of $9,165 25, instead of the sum aforesaid.

It was by the defendant contended, that for the purposes of this inquiry I should regard the plaintiff as the owner of but one-half of the interest of Hazard & Co. in said machinery and the said contract, he maintaining that by the conveyance to Almy one-half only of the Hazard's interest was sold and conveyed absolutely to him, it being stipulated therein that the remaining half should be and become the property of Low & Fenner, in event they should pay certain drafts, notes, &c., in the instrument referred to; and contending, that by a certain report of referees to the supreme court of Rhode Island, in 1840, in a case between Low & Fenner, plaintiffs, and R. G. Hazard & Co., defendants, which report was received and established by the court, it was shown and proved that Low & Fenner did in fact make payment of said notes, drafts, &c. But inasmuch as a copy of the report of said referees was the only evidence submitted on this point, and this was objected to by the complainant as a record no wise binding upon him, and for other reasons not required to be stated, I held this position of the defendant untenable.

By the defendant it was also contended that a sum of $323 16, with interest to the amount of $71, making a total of $394 16, should be charged against the complainant in this account, because, by the report aforesaid, it appeared that the said referees had credited R. G. Hazard & Co. with that sum in stating an account between that firm and Low & Fenner, as having been paid by Christopher Lippitt for cans, bobbins, &c., for the Griswold Mills, and by Lippitt charged to said Hazard & Co., but in the absence of all evidence other than said report the claim I disallowed.

And further, it was contended by the defendant that the consideration named in the conveyance from Hazard & Co's assignees to the complainant, namely $5,000, and the sum paid by him for a speeder, $550, making in all $5,550, should be received as the amount of the complainant's claim upon the said machinery; that from this amount

Lippitt's one-half part of the profits of the [illegible] stocked the mill; and that the balance thus found, if any, with interest as directed, should be reported by me as the balance found under the first inquiry. But this view of my duty in the premises appearing to me unauthorized, I have prepared no account based upon the principle contended for.

The second inquiry is, the value of the machinery when converted by Wilbur, charging interest thereon since.

The fact of a conversion by Wilbur I understand to be not a matter for investigation before me. Accordingly, of the testimony and the arguments bearing upon that point submitted by the defendant, no notice whatever can be taken by me in my official character.

The date of the assumed conversion, however, it becomes necessary here to ascertain; and in regard to this I find and report that the date of the conversion was the 25th day of November, 1836, the day on which a demand for the machinery was made on the defendant by an agent of the plaintiff.

As respects the machinery converted, however, the parties are at variance. The complainant contends that for all the machinery furnished to Lippitt by Hazard & Co., which was in the Griswold mill, on the said 25th of November, the defendant is bound to account, as having been by him converted, while the defendant claims and avers that only for that portion of said machinery which was conveyed to him by mortgage from Lippitt, can it be intended by the court to hold him accountable.

In this view taken by the defendant I concur, and accordingly here exclude from consideration two drawing frames, and Brewster's roper, alias Brewster's rubber, alias a leather apron speeder, named in the schedule of machinery D, appended to the complainant's bill, but which are not named in the said mortgage, nor embraced by any of its terms or clauses.

In prosecuting the inquiry as to the value of the machinery when converted, the testimony before me allows of but one course as regards the bulk of said machinery. The two Field's speeders may be treated of separately; but to ascertain the value of the residue, no mode under the testimony can be adopted other than, in the first place, to find its first cost, and then to deduct from this sum for deterioration whatever per centage the proof shall be found to warrant or require.

Adopting this mode, I find that the cost, in 1828, of the machinery mortgaged (exclusive of the two speeders aforesaid) was the sum of $8,117 98. From this amount the testimony seems to require deductions to be made upon three several and distinct grounds: 1st. On account of deterioration incident to the constant use of the machinery for a period of about eight years, from 1828 to 1836. 2d. On account of a decline in the price or cost of machinery generally within the said eight years. And, 3d. On account of improvements in the construction of machinery, as regards size, form, capacity, and durability, the effect of which was, practically, to lessen the value of machinery built as early as 1828. And in view of the evidence submitted upon these

several points, I find sixty per cent. from [illegible] reasonable deduction. Making a deduction [illegible] aforesaid sum, the balance is $3,247 20, to which there remains to be added the value, in 1836, of the two Field speeders aforesaid.

Of these two speeders, one was furnished by Hazard & Co., in 1828, costing, according to the evidence, $750; and the other by Almy, in 1831, costing $550. It appears, however, that prior even to the mortgage to Wilbur, these machines had been set aside, out of use, by Lippitt, and a new machine, called the Taunton speeder, obtained and used in their stead. That Lippitt had offered to sell them for $150 each, but could not get an offer of $100. That they never were afterwards used by Lippitt, or any other occupant of the mill; but, by the next occupant after Lippitt, were, with the consent of the then owner, taken to pieces and stored in a neighboring building, where, for aught that appears, they ever after remained unsold, abandoned as of little value. And, also, that this kind of speeder, thus by Lippitt thrown aside prior to December, 1835, to give place to its rival, the Taunton speeder, has subsequently been discarded by manufacturers generally, and the Taunton speeders and other speeders used, until now, according to the evidence, no Field speeder is used in this vicinity. Under this state of proof I cannot regard these speeders as of much value in November, 1836, and therefore add to the balance aforesaid, as the value of these machines, only the sum of $200; thus increasing that balance to the sum of $3,447 20 adding to which interest to June 15th, 1849, ($2,586 72,) the aggregate is $6,033 92.

The third inquiry is, "Wilbur's interest or control over the said machinery, and his receipts therefor, with the dates."

Assuming that under this direction I am to ascertain the extent or amount of Wilbur's individual interest in the machinery, I report that I find his interest to have been only that of a co-mortgagee of the property, real and personal, named and described in the mortgage A, referred to in the defendant's answer; and that that interest was extinguished and fully satisfied by the receipt on the 1st of December, 1837, of the sum of four hundred and seven dollars and fifty-four cents, ($407 54,) the receipt of which sum at that date is the only receipt by said Wilbur for or on account of the said machinery, or the other property named in said mortgage, of which I have acquired any knowledge. But further, assuming that the object of the inquiry, as respects its first branch, is simply to ascertain to what extent, or in what degree, the defendant possessed and exercised a controlling power over the said machinery, I have to remark, by way of preface, that by the complainant it was claimed in argument, before me, that the admissions, or rather sworn statements, of the defendant in his answers, and especially his statement in his amended answer, page 43, conclusively establish that from the 8th of December, 1835, to the 9th of March, 1837, the defendant, for himself and as the agent and attorney of a part of his co-mortgagees, had and enjoyed the actual possession and, by consequence, the complete and entire control of the said machinery. And that no testimony contradictory of that admis-

by this defendant should be received, or, if received, should be allowed no weight whatever by the master. And further, it was claimed by the complainant that even if evidence contradictory of the answer in this particular were received and weighed, (of which species of evidence it was agreed there was some before the master, a portion received by him at an early stage of the inquiry, without objection from the complainant, and the residue received de bene esse, notwithstanding objection,) still it would stand satisfactorily proved that said Wilbur had control over the said machinery, in the sense of the court's decree, whoever may have been in the actual possession of it, using it and enjoying the benefit of it from December, 1835, to the spring of 1837.

On the other hand, by the defendant it was contended, that if the language of the answer was to be construed as claimed by the complainant, the court would not have directed this inquiry; that, in fact, the admission cited from the amended answer was the result of misapprehension and mistake on the part of the defendant and his solicitor, and that the tenor and import of the language was never understood by the defendant, until at a hearing in the master's office, on the 19th day of May, 1848, it was read and commented upon by the complainant's counsel; that the testimony before the master showed beyond controversy, that the statement in the answer could not be true, inasmuch as it proved, that excepting from about Dec. 8th, 1835, to about March 7th, 1836, said Wilbur had never any possession of, or power or control over, the said machinery.

And that this testimony, although contradictory of the answer as construed by the complainant, should be received and weighed, and the master's report made conformably therewith.

Such being the claims and positions of the parties respectively, I thereupon report:

First. That I find said Wilbur's control over said machinery was this, namely, that from the 8th of December, 1835, to the 7th of March, 1837, he was in actual possession of the same, as mortgagee, under and in virtue of the mortgage A aforesaid, to himself and his co-grantees, of a part of which co-grantees he was at the same time agent and attorney, and by none of whom was that possession interrupted or questioned; and that after said 7th of March, when the mill in which said machinery was standing was taken possession of by Morgan & Fanning, under an execution in ejectment against Christopher Lippitt in their favor, as the owners of Lippitt's equity of redemption in the real estate, and of the two mortgages of the real estate prior in date to the mortgage to Wilbur and others, the said Wilbur's control, (if control it was,) consisted in his right to demand and recover the machinery from the owners and occupants of the mill, who, so far as appears, had no claim whatever to its custody or use as against Wilbur and his co-mortgagees; the which right of said Wilbur it seems, though never asserted or exercised, continued unimpaired down to the 1st of December, 1837, when the machinery with warranty and the mortgage deed were sold to Morgan & Fanning as aforesaid. And I thus find and thus report, so far as

regards the actual possession by said Wilbur [illegible] as master to view as conclusive the said admission [illegible] of the defendant, and to reject any and all evidence by him offered, contradictory of that admission.

And secondly. That in compliance with the urgent request, not to say demand of the defendant, and deeming such a course, though somewhat irregular, yet not unwarrantable under the peculiar circumstances of the case, I further report, that by the evidence received by me as aforesaid, (a portion without objection, and the residue subject to objection,) and other evidence to which no objection was or can be made, the facts hereinafter set forth appear to be satisfactorily established, namely:

That about the date of the said mortgage to Wilbur and others, all the property, real and personal, of Christopher Lippitt in and about the said Griswold mill, was attached on mesne process by a creditor or creditors of said Lippitt, whereupon the said Wilbur became receptor to the attaching officer for all the personal property, including the stock in process of manufacture, and took possession of the entire establishment, and retained possession of it, certainly until about the first of March, 1836, the mill being meanwhile run for said Wilbur by Christopher H. Lippitt, son of Christopher, Wilbur furnishing stock; and the proceeds of the business, after satisfying therefrom the claims of the attaching creditors, and thus raising the attachment, being paid over by said Christopher H. to his said father, Wilbur himself receiving nothing therefrom, not even his personal expenses.

That on the 16th of February, 1836, a contract in writing was made by and between said Christopher H. Lippitt and one Joshua Fenner, to commence the 1st of April, 1836, and continue one year, to the effect that said Fenner should run the mill for the manufacture of sheeting at three cents the yard, having the use of the factory building, machinery, &c., free from charge. That in the latter part of March, 1836, said Christopher Lippitt made an assignment of all his property of every description, under the insolvent laws of Connecticut, for the benefit of creditors; and also, about the same time, contracted with William J. Harris of Providence, to receive cotton to be manufactured at the Griswold mill from Harris, and return him, Harris, the cloth made, to be sold by him on Lippitt's account; that the cotton furnished by Harris under this contract with Christopher Lippitt, was manufactured at the Griswold mill, by said Joshua Fenner, under the contract between said Joshua, and Christopher H. Lippitt the said Harris' dealings and accounts being with Christopher Lippitt, and the accounts of Fenner being kept by him with Peleg Wilbur; that the mill was thus run and occupied by Fenner until August, 1836, when in consequence of a disagreement respecting the price for manufacturing a new style of goods, he gave up the aforesaid contract, and ceased to operate the mill; that said Wilbur took part personally in the controversy respecting the price of manufacturing, was present at the settlement between C. H. Lippitt and Fenner, and in writing requested the said Harris to pay an order of C. H. Lippitt upon him, Harris, for the balance found due to

$1,293 75, which the said Harris paid on [illegible] and the said written request of Wilbur. [illegible] after Fenner ceased to run the mill, it continued to be stocked by Harris under his contract with Christopher Lippitt, until March, 1837, when possession was taken by the owners of the equity of redemption in the real estate, under an execution in ejectment against Christopher Lippitt; the balance of about $14 found due said Harris on the closing up of his accounts with said Lippitt being paid him by said Wilbur, under and in virtue of a verbal guarantee given Harris by Wilbur, to indemnify him against any loss in his dealings as aforesaid with Christopher Lippitt.

That in the month of October, 1836, the assignees of said Lippitt made sales at public auction of all his interest in the mill property, both real and personal, assigned to them in March previous, including his equity of redemption in the real estate, subject to two mortgages for about the sum of $8,500, prior in date to the mortgage to Wilbur, and subject also to Wilbur's mortgage and his right of redemption, and whatever other rights he had in the machinery named in that mortgage, one John W. Fanning being the purchaser; at which sale it appears the defendant was present, and at which also it appears notice was given of a claim of Almy to the machinery.

That after said sale, in the same month, a proposition was made to said Lippitt by the said Fanning and other creditors to consolidate his debts, and allow him an opportunity of running the mill under his contract with Harris, to earn the means of paying his debts, he as a preparatory step, however, to surrender the possession of all the property to the said Fanning; and that thereupon Lippitt came to Rhode Island, and stated to Mr. Wilbur what had been proposed, in answer to which Wilbur said, that if they, the creditors, would consolidate his, Lippitt's debts, he, Lippitt, might give them possession.

That thereupon Lippitt, on the 27th of October, 1836, by an instrument in writing, signed by himself and by the said Fanning, surrendered to said Fanning possession of the lands of which he had been the owner, with a cotton factory and the machinery therein; and the said Fanning in and by the same instrument, leased to said Lippitt the whole of said property, real and personal, for the period of one month, for a reasonable rent. That on the 7th of March, 1837, Fanning & Morgan, then the holders of the two mortgages upon the real estate as aforesaid, and the owners of the equity of redemption, sold to Fanning as aforesaid, by an execution in ejectment by them obtained against said Lippitt, took possession of the real estate, including the mill, and incidentally of the aforesaid machinery then in the mill, they having as it appears no title to the machinery other than that acquired by purchase at the assignees' sale in October, 1836.

That, on the twenty-second of March, 1837, the said Wilbur, for himself and those for whom he held power to act, and the said Samuel C. Morgan, for himself, and as attorney of the Norwich banks, affixed their signatures to a certain instrument, in which, after a recital that there is pending in the supreme court of Connecticut a petition against

Peleg Wilbur and others, requiring them to [illegible] and said bank (as holders of the prior mortgages aforesaid) to [illegible] and profits of the Griswold mill estate, "the said Wilbur agreed to pay the sum of eight hundred dollars for the rent of the property, from the time he took possession of the same as one of the mortgagees, in Dec., 1835, to the 15th of October, 1836, when the equity of redemption was sold." That upon the back of said instrument was written a memorandum, to which are affixed the signatures of said Wilbur and John W. Fanning, to the effect that the said Wilbur should, in a certain event, pay to said Fanning two hundred dollars as a rent for the Griswold mill property, "during the time it was improved by his brother-in-law Christopher Lippitt, under a lease from said Fanning."

That, on the 1st of December, 1837, the said Wilbur, for himself, and for a part of the other mortgagees, conveyed to Morgan & Fanning all their interest in the said machinery and mortgage, with a warranty of the machinery, for the amount due upon their several claims, which was $2,766 25; Morgan & Fanning retaining, pursuant to the aforesaid agreement of March 22d, 1837, the sum of $1,040, being the said two sums of $800 and $200, and $40 for interest accrued. That the said sum of $200 was afterwards (when, does not appear) paid to said Wilbur by said Christopher Lippitt; that said Wilbur (when, does not appear) claimed of Joshua Fenner payment of the rent for a house occupied by him on the mill estate from August, 1836, to March, 1837; asserting and claiming that the mill estate was in his possession until the latter date, when Morgan & Fanning took possession; and that Christopher Lippitt, to whom said Fenner asserted he had already paid the rent demanded, had no right to collect it, either as his, Wilbur's, agent, or otherwise. That for the seven years, from October 1st, 1830, to September 30th, 1837, the factory building, fixtures, and machinery, were under insurance for the sum of $6,500 for Christopher Lippitt, and on his application; the last policy made and issued having been issued on the 30th of September, 1835, and renewed in September, 1836, without change of name or amount, for a period of one year from that date; the which said facts I here leave to be used by the parties as they shall see fit, deeming it no part of my duty, after reporting upon the inquiry addressed to me, as set forth on a preceding page, to deduce any conclusion from them.

The fourth inquiry is, "the amount of damage sustained by Christopher Lippitt, if any, by the non-performance by Hazard & Co. of their contract of March 7th, 1828."

In prosecuting this inquiry I assume, as a fact established by the decree, that Almy, by operation of the conveyance to him, and the dealings between him and Lippitt, became, and is now to be regarded as the successor or assignee of Hazard & Co. in and under said contract; and hence find myself not at liberty here to inquire only what damages the said Lippitt would have sustained from the failure of Hazard & Co., had he then elected to refuse supplies from any other person, and to cease manufacturing, and claim damages and a settlement with Hazard & Co.; on the contrary, I deem myself bound to take into view the

...itt after the failure of Hazard & Co.; and ..., in connexion with the non-performance ... said contract by Hazard & Co., ascertain and report the damage, ... sustained by said Lippitt, which may now rightfully be claimed against Almy, as the successor or assignee of Hazard & Co., by Wilbur, the successor or assignee of Lippitt. And, under this view of my duty, I find and report that said Lippitt has sustained no damage whatever. It is true, as shown by the evidence, that for some three or four weeks immediately ensuing the failure of Hazard & Co., Mr. Lippitt's business operations were, in some degree, interrupted, and he, in a trifling degree, embarrassed in consequence of that event; that, under the arrangement with Mr. Almy, as the agent of the assignees of Hazard & Co., which continued for eight months, one quarter of a cent (amounting in the aggregate to only the sum of $258 98) was retained and applied to the machinery account, out of the three and a half cents which, under the contract, he, Lippitt, was entitled to receive in cash for each yard of cloth manufactured and delivered; and that he, Lippitt, was subjected to the inconvenience and expense, whatever it was, of running out his stock four several times.

But it also is true, upon the evidence, that, to the retention and application of the one-quarter of a cent, Mr. Lippitt assented, after a brief negotiation, as also to the substitution of Almy, with his business talents and facilities, for Hazard & Co., with their business talents and facilities; that, after the expiration of said eight months, Lippitt demanding it, the contract price of three and a half cents per yard for manufacturing was paid him in cash by Almy. That he, Lippitt, enjoyed thereafter every advantage and benefit of the contract which he could have enjoyed had Hazard & Co. continued solvent, so long as Almy supplied the mill; and after Almy ceased to supply, and he, Lippitt, provided his own stock, [he] enjoyed all the profits of the establishment, paying nothing to any one on account of the machinery, or for the use of it, until, certainly, the month of December, 1835.

The *sixth* inquiry is, "the damage, if any, sustained by the plaintiff, by the non-performance of said contract by said Lippitt."

As the interest since September, 1832, upon the balance due the plaintiff on account of the machinery, is already reported in reply to the first inquiry, I assume, that the only damage which I am here required to ascertain and report is that, if any, sustained by the plaintiff in consequence of Lippitt's ceasing to receive cotton from him, and his consequent exclusion from all participation, after September, 1832, in the profits of the Griswold mill.

And hereupon report, that I cannot ascertain or find that the plaintiff sustained any damage from the cause named in the inquiry; the weight of evidence being directly in favor of two conclusions, in view of which any claim of Almy for damages would seem to be unwarrantable. The first, that Lippitt ceased to receive cotton from the plaintiff, and to deal with him as the successor of Hazard & Co. under the contract, not only without protest and objection on the part of the plaintiff, but with his express consent and approbation; the second, that said

Lippitt was given reason to believe, and [illegible] remain and to act under the belief, that he, the plaintiff, [illegible] for the purpose merely of obtaining a debt due him, said Lippitt [illegible] having been informed, according to the evidence, of Almy's claim to the owner of the machinery and contract by purchase, until the commencement of this suit.

The sixth inquiry is, "the damages sustained by Lippitt aforesaid and by Wilbur, by non-performance of the contract in the pleadings mentioned, between the plaintiff and defendant."

In reference to which I report, that I find no reason for believing that either the said Lippitt or the said Wilbur sustained any damage from the cause stated, which properly can be reported by me as damages within the sense of this inquiry; that the ceasing by Almy to stock the mill was with the full and entire consent of Lippitt, and in accordance with his wishes at the time, seems not to admit of question; and that said Wilbur sustained damage from the cause stated, of which a master can officially take cognizance, has not been made evident by any testimony, or any argument or suggestion of counsel.

All which is respectfully submitted. I herewith, by request of the parties, presenting entire the evidence submitted to me, and referring to a former report, at the November term of this court, for information on certain points not alluded to in this report.

JOHN P. KNOWLES, *Master*.

Master's fees and charges, $250.

Complainant's testimony in the hearing before the Master.

Asa Fenner's deposition.

Examination of Asa Fenner, of Jewett City, Connecticut.

Questioned by R. G. Hazard, esq., for complainant—

Ques. 1. Are you acquainted with the mill and machinery formerly occupied and used by Christopher Lippitt, in Jewett City?

A. I am. I hired it in [the] spring of 1837, and of 1838, and occupied it for two years; my brother and myself hired it; my brother's name was Joshua. We gave, in 1837, $1,300 for rent, and in 1838, $1,400. The owners, Fanning & Morgan, refused to rent for same for 1839, and we left in consequence of their refusal; we would not pay $1,500, the rent demanded.

Ques. 2. Was the machinery the same which had been used by Christopher Lippitt?

A. It was.

Ques. 3. What had you besides the machinery?

A. Four dwelling houses, about five acres of land, and the mill buildings and water power. The mill buildings were the mill itself and two smaller buildings, one used for picker house, the other for making sizing and baling cloth.

Ques. 4. What was the value of the four houses and land annually?

Ans. We rented the four houses for $200, $25 for each of 8 tenements. The land we occupied ourselves; it was worth about $20 per annum, what we occupied.

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The buildings and fixed machinery were worth about $2,000;
r rent for them would be ten per cent. upon their value.

Ques. 6. In what repair were the buildings?

Ans. They were out of repair; they were old buildings.

Ques. 7. Had any part of the machinery, which Mr. Lippitt had
ed in the mill, been removed at the time you took the mill?

Ans. None had to my knowledge.

Ques. 8. What was the value of the machinery at the time you
ook it?

Ans. It was worth half as much as new machinery of the same kind.

Ques. 9. Did you ever propose to buy the machinery?

Ans. I did propose to buy the whole establishment; that is, the lands, buildings, houses, and machinery, and offered for it $13,000. This offer was made to Fanning & Morgan in the spring of 1839, and was by them refused, they demanding $14,000.

Ques. 10. What was the condition of the machinery at the time you gave it up, as compared with its condition when you took it?

Ans. It was in about the same condition, ordinary wear and tear excepted. We made none but necessary repairs; that is, such as were necessary to keep it running. We had not agreed to make any repairs.

Ques. 11. Did you occupy the mill next after Mr. Christopher Lippitt occupied and improved it?

Ans. Mr. Lippitt occupied it, that is, managed it, part of the year before I took it. It was the latter part of the year he managed it; the earlier part of the year my brother Joshua managed it, running by the yard.

Ques. 12. Who controlled the mill property, machinery included, from the failure of Christopher Lippitt down to the time of the sale to Morgan and Fanning?

Ans. Mr. Peleg Wilbur.

Cross examined by Wm. H. Potter, for defendant.

We had a written lease from Morgan & Fanning, which is at my house in Jewett City. The agreement was made in March, 1837, and we took possession in April, about the first of the month. We paid the rent to Morgan & Fanning. I do not know how old the machinery was, nor how long it had been in use; I had known it for some five or six years before I took it; it had been run by Mr. Lippitt the reputed owner. I lived at Jewett City at the time Mr. Lippitt failed, where I have resided since 1830 constantly. My brother made a contract with Maj. Lippitt's son to run the mill for Mr. Wilbur, (as said Lippitt, jr., stated, not in presence of Mr. Wilbur,) in the spring of 1836; I have seen a letter from Mr. Wilbur, in reply to a letter from my brother, which related to the price he would pay, and would not pay, for cloth made narrower than had previously been made. My brother commenced running by the yard about first of April. The contract was made by Mr. Lippitt's son, Christopher H. Lippitt, with my brother, as he, Lip-

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Ans. The buildings and fixed machinery were worth about $8,000; ... rent for them would be ten per cent. upon their value.

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pitt, said, for Mr. Wilbur. My brother [illegible] when Mr. Christopher Lippitt took it and [illegible] My brother gave it up on account of a disagreement about the price per yard for making narrow cloth. There were, I think, six or eight [illegible] ning frames; 10 or 12 cards, I can't say which exactly; one Taunton speeder, and no other speeder; there were also 20 looms, common kind; 1 dressing machine, of the same age as the other machinery, so far as I knew. I know Peleg Wilbur had control, as stated in answer above, because I was familiar with the contract between Mr. Lippitt's son and my brother; there was nothing in the written contract between the younger Lippitt and my brother about Mr. Wilbur. Because, also, I heard conversation between Mr. Wilbur and my brother about the price of manufacturing narrow goods; I heard a conversation at my store between them, after the receipt of the letter I mentioned. I recollect of that conversation only, that Mr. Wilbur contended it was not worth so much to make narrow as wide goods, and that my brother and he differed, and my brother quit. I don't recollect, in particular, ever being in the mill before Mr. Lippitt's failure. After my brother quit, a settlement between him and Mr. Lippitt took place at the store of C. H. Lippitt, where Mr. Wilbur was present, assenting in the settlement.

Direct resumed

Question 13. Were you present at any other conversation between your brother and Mr. Wilbur not already mentioned?

Answer. I heard a conversation between them at the mill before the alteration in the width of goods; this had relation to that alteration and the price to be paid.

Question 14. In what names were the accounts between your brother and Lippitt under the aforesaid contract kept?

Answer. They were kept by C. H. Lippitt; in whose names I do not know; I think they were kept by Lippitt in his own name.

ASA FENNER.

Joshua Fenner's deposition.

Examination of Joshua Fenner, of Canterbury, in the State of Connecticut.

Question 1. Are you a practical manufacturer; if yes, how long have you been engaged in the business of manufacturing?

Answer. I am a practical manufacturer, and have been such for about eighteen years past; a portion of that time as an operator, and a portion of the time on my own account.

Question 2. Were you acquainted with the machinery in the mill formerly occupied by Christopher Lippitt in Jewett City; if yes, when *was* you acquainted with it?

Answer. I was acquainted with that machinery at the time Christopher Lippitt failed; I commenced running of it soon after his failure; I took it from Christopher H. Lippitt, who said he was acting for his uncle, Peleg Wilbur, and run about three or four months; then Mr. Wilbur came up to the factory; we differed some about the manufac-

take the mill back off my hands, and he

Question 3. Had or had not Peleg Wilbur affirmed or recognised the contract made by you with Christopher H. Lippitt?

Answer. He had done so; he did so at the time I gave the mill up, and had done so previously; I had asked, after making the bargain with Christopher H. Lippitt, if our proceedings were right, and he said they were; when I gave the mill up, Mr. Wilbur told Christopher H. Lippitt to look over the accounts and see how we stood in regard to manufacturing; we found about $1,300 due me, and Mr. Wilbur or Christopher, I don't know which, gave me orders, verbal or written, to go to Mr. Harris who received the goods and get my pay; I went to Mr. H. and he paid me.

Question 4. Did you subsequently hire the mill and machinery; if yes, when, of whom, and for what price?

Answer. I and my brother Asa hired of Morgan & Fanning, for two years, the whole establishment; the rent for the first year was $1,300; for the second year $1,400; for a third year $1,500 rent was demanded, which we refused to give, and the owners let it to Hawkins & Ladd for $1,500 per year; Hawkins & Ladd run the mill about a year and a half, when they failed, and I hired the mill on my own account, and run it till I was burned out, say about 12 or 15 months; the rent was $1,200 per year, and Morgan & Fanning the landlords.

Question 5. During the two years you and your brother run the mill, who had charge of the mill?

Answer. I had the oversight of the work and mill, and my brother kept the store, kept the accounts, and settled with the help.

Question 6. How many speeders were in the mill at the time you took it?

Answer. There were three; one Taunton speeder and two belted speeders; the belted speeders hand twenty spindles each, if I recollect right; there were six or eight hundred bobbins belonging to these two speeders; we run only one speeder, the Taunton speeder; one of the belted speeders was considerably worn, and the other was but a little worn; these two speeders, after we had hired the mill some time, were taken to pieces by us, by consent of Mr. Fanning, and stored in the basement story of one of the houses on the premises; the house nearest the mill.

Question 7. Did you receive with the mill all the machinery which had been used in it by Christopher Lippitt?

Answer. I think we did; we received the mill and its machinery in running order, with all the appurtenances; this is according to my recollection.

Question 8. What was the value of the machinery at the time you took it?

Answer. I should say it was worth in the neighborhood of about two-thirds what it was when new; I should think it was about one-third worn when I first commenced.

Question 9. What care had been taken of the machinery by Mr. Lippitt while it was used by him?

Answer. I should think he took good c[illegible] pearance when I first took it; while I and my brother had the machinery under contract with Morgan & Fanning, we made no repairs [illegible] than were required to keep the machinery running.

Question 10. Was the contract between you and C. H. Lippitt referred to in question 3 in writing; if yes, where is the paper?

Answer. The contract was in writing I am pretty certain; each of us had a copy; my copy is somewhere among my papers, I suppose, at home; I will look for it and send it to you, if you wish me to do so.

N. B. The parties here agree that the paper referred to by witness, when received by the master, shall be attached to this examination as an authenticated paper.

Question 11. Did you or not, at any time while running the mill under the contract last referred to, receive any letter or letters from Mr. Peleg Wilbur?

Answer. Not to my knowledge.

Question 12. Who had the control of the mill and machinery above spoken of after the failure of Christopher Lippitt?

Answer. I can't tell you more than I have told you; Christopher H. Lippitt said he was acting for his uncle Wilbur; that is all I can tell you about that.

Question 13. In your conversation and dealings with Peleg Wilbur, did he profess to act as agent for any other person or persons?

Answer. He appeared to be acting for himself; but I don't know whether he was acting for himself or somebody else.

(Mr. Peleg Wilbur in person appears and waives his right to cross examine the witness.)

JOSHUA FENNER.

Paper referred to in preceding deposition.

This agreement, entered into this 16th day of February, one thousand eight hundred and thirty-six, by and between Christopher H. Lippitt, of Griswold, county of New London, and State of Connecticut, on the one part, and Joshua Fenner, also of said Griswold, on the other part, witnesseth: That the said Lippitt, on his part, agrees to furnish Joshua Fenner with cotton necessary for the manufacturing of cotton sheeting in the factory now occupied by Peleg Wilbur, and to receive the goods of him at the factory bales and in good order for market, and pay on delivery of the invoice of the goods three cents per yard in cash unto the said Fenner, which shall be in full for manufacturing of said goods. And the said Fenner, on his part, agrees to receive from the said Lippitt all the cotton necessary for the manufacture of cotton sheeting as aforesaid at the factory, and that proper and prudent care shall be taken of the same in the various stages of manufacture, and that he will manufacture the same into yard wide sheeting, from number eighteen yarn, in a workmanlike manner, and deliver the whole of said sheetings, together with all the waste at the factory, unto the said Lippitt, and as soon as reasonably can be done after stock is received. And it is further understood and agreed, that a skein of yarn shall be reeled every

from the six skeins at the end of the week [illegible] the week's work from; number eighteen [illegible] be three cents per yard, and if finer or coarser the price shall vary according to the number of the yarn. And it is also understood and agreed, that the said Fenner is to have the use of the factory buildings and machinery free from any charge, except the machine shop, which he is to occupy only for doing the repairs of the mill.

Said Fenner is to account to the said Lippitt for the rents of the dwelling-houses connected with the factory. And it is also understood and agreed, that the said Fenner is to do all the repairs of the factory machinery, except the main gears and water-works, which are to be kept in repair by the said Lippitt. If the cotton sacks are not sufficient to bale the goods in, the said Lippitt is to furnish baling cloth sufficient to bale them. The waste is to be kept clean and separate as it now is, and no more to be made than the machinery will make by good management. It is also understood and agreed, that this contract is to commence *of* the first day of April next, and to continue one year from that time.

CHRISTOPHER H. LIPPITT,
JOSHUA FENNER.

Nathaniel Shepardson's deposition.

Examination of Nathaniel Shepardson, of Hopkinton, R. I. Questioned by R. G. Hazard for complainant.

Question 1. How long have you been engaged in the manufacturing business?

Answer. About nineteen years.

Question 2. What is the rent of water-power, buildings, and fixtures, including tenements, for cotton machinery per spindle, including preparation and looms.

Answer. The price would vary some; I suppose it would average about 50 cents a spindle in the section of country about Hopkinton, Exeter, and Richmond, about 25 miles from Providence.

Question 3. Has there been any material variation in rent within twelve years past?

Answer. No; I should think not.

Question 4. Have you known of mills rented?

Answer. I have; I have hired one myself; I paid $212 for a mill that operates over 500 spindles; I hired in 1831 for ten years; I occupy one now hired of J. T. Barber, for J. T. Barber & Co., of which I am a member; I pay $680 per year; I hired for five years, four years ago this spring; I operate about to 2000 spindles, a little short.

Question 5. How far is your mill from Jewett City?

Answer. I think about 16 miles.

Question 6. What is the cost of transportation to your mill?

Answer. The cost from Providence is, by team, from 20 to 25 cents per hundred; by railroad and team, 19 cents per hundred.

Question 7. How are the buildings and water-power where you now are?

Answer. The water-power is good, and

Cross examined by Wm. H. Potter, esq., for defendant. No question.

NATHANIEL SHEPARDSON.

Edward S. Williams' deposition.

Examination of Edward S. Williams, of Providence. Questioned by R. G. Hazard, esq., for complainant.

Question 1. Are you engaged in the manufacture of cotton?

Answer. I am, and have been, with the exception of a few months, since January, 1829.

Question 2. What is the rent of mills, including fixtures and tenements, per spindle, for cotton machinery, including preparation and looms, exclusive of machinery?

Answer. I don't know exactly what rents have been in that neighborhood. I let a little mill in Killingly, about 29 miles from Providence, and same distance from Norwich, for about 50 cents a spindle. The capacity of this mill was about 800 spindles. I have offered to rent my larger or main mill at something less. In fact I have accounted for it with my partners at much less, under peculiar circumstances, however. This mill has probably water-power for more spindles than it will hold, to operate at all times. It is a substantial mill, of stone; will hold, by close stowage, 6,000 spindles, with looms and preparation. But we estimate the mill at about 5,000 spindles, easy stowage, leaving ample room to operate. We have about 27 acres of land, with 21 tenements and other convenient buildings. The tenements, however, are not quite sufficient for the machinery the mill will hold. In 1842 I offered to let, for 5 or 10 years, my interest—that is, about $\frac{3}{4}$ or $\frac{4}{5}$, at $2000 per year; that is, at the rate of $2000 for the whole. It is situate about 29 miles from Providence, and about $1\frac{1}{4}$ mile from the railroad station at Daysville, on the Norwich and Worcester road. The construction of said railroad has, I think, increased the value of the mill.

Question 3. How was the cotton manufacturing business in 1836?

Answer. In regard to rent of mills, my impression is, they would have rented better in 1836 than in later years, say in 1840. I believe the business in 1836 was not so good as it had previously been. In latter part of 1829, 1830, and 1831, the business was very good; in the early part of the year 1832 business was very good; in the latter part of the year it somewhat declined; in 1833 was about the same as the latter part of 1832; 1834 was the panic year, and the business was not good, and from that time to 1843 the business was rather dull. Of the profitableness of the business in 1837, I have not a particular recollection. In our business the results were about the same as immediately before and immediately after, according to my recollection. Had it been otherwise, I should probably recollect the fact. The banks suspended in May, 1837, and there was a severe pressure previous to that event. This pressure commenced as early as the December previous, and in-

In Providence some of the best houses, [illegible] ded to allow their paper to be protested. As regards the results of manufacturing in the years above mentioned, it should be understood as referring to my own business, and speaking from personal experience.

Mr. Potter, for defendant, waives cross examination.

EDWARD S. WILLIAMS.

Amos D. Smith's deposition.

Examination of Amos D. Smith, of Providence. Questioned by R. G. Hazard, esq., for complainant.

Question 1. What is the rent of mills, including fixtures and tenements, for cotton machinery, rated by the capacity per spindle, including preparation and looms?

Answer. In the year 1838 we hired a mill at Willimantic, with room and power for 2,664 spindles, with preparation and looms, for $1,050 per annum. We had no tenements under this hiring. We hired from year to year—a year's notice to be given by either party. The buildings were stone. They were, however, not sufficiently spacious for all our machinery. Four mules, of 216 spindles each, we run in a separate building, about 70 feet distant from the mill. We had no other building under this hiring than the mill buildings, with a privilege in the separate building above mentioned to run two mules. Our storehouses and tenements we provided at our own expense. The mill was distant from Jewett City about 15 or 20 miles, about 16 from Norwich, in a northwesterly direction. We took the mill upon the terms of a previous lease. We furnished a portion of the geering for the mill; how much I cannot now say. We run 84 looms. In saying we, I speak for the firm of A. D. & J. Y. Smith.

AMOS D. SMITH.

Mr. Potter, for defendant, waives cross examination of the witness.

J. P. K.

Jonathan P. Stillman's deposition.

Examination of Jonathan P. Stillman, of Westerly, R. I. Questioned by R. G. Hazard, esq., for complainant.

Question 1. Were you acquainted with the machinery in the mill formerly occupied by Christopher Lippitt, in Jewett City?

Answer. The most acquaintance I had with it was in an examination I made of it in 1839. I was called on, in connexion with James W. Thompson, by Samuel Morgan and John Fanning, to examine the condition of the machinery, to have it noted, as they were about to let it and the mill. I can't say what time in 1839 this was, without reference to those notes. It is my impression that Joshua and Asa Fenner had last occupied it previous to this examination. The mill was lying still at the time of the examination. Who occupied the mill immediately after the examination, I am not able to say.

We did not appraise the machinery; [illegible] have a list of the articles of machinery, [illegible] made no appraisal. At the time I took [illegible] the machinery. My memorandum and my recollection of the condition of the articles is all I have now upon which to form a judgment of the value of the articles. I should not be willing to swear positively to the value of that machinery in any case. I don't know as I should be competent to give a judgment upon the value of the machinery.

Mr. Potter, for defendant, waives cross examination.

JONATHAN P. STILLMAN.

Isaac W. Thompson's deposition.

Examination of Isaac W. Thompson, of Thompson, Conn. Questioned by R. G. Hazard, esq., for complainant.

Question 1. Were you acquainted with the machinery in the mill formerly occupied by Christopher Lippitt, in Jewett City, Conn.?

Answer. I was in the mill several times while it was occupied by Mr. Lippitt, but never noticed the machinery particularly on those occasions. In the month of April, 1839, Esq's Fanning and Morgan requested Mr. Stillman and myself to examine the machinery in the Lippitt mill, as they had let the mill to the Messrs. Fenner, and wished the machinery examined at the commencement of the tenant's term, intending to have it examined also at the close of their term. We examined it accordingly in April, 1839; and when the tenant's term expired we examined it again, whether after one year's time or two years I can't say; it was at the end of the Messrs. Fenner's term, whenever that was. At the first examination took a memorandum, but took none, I think, at the second. At the date of each examination I resided in Griswold, Conn. From Griswold I removed in August, 1847, having lived there the 20 years previous.

Question 2. Do you recollect the condition of the machinery at the time you took the mem. referred to?

Answer. Yes, I recollect something of it. There were a couple of mules, I should think, of at least 192 spindles each, worth, I should think, $1 50 per spindle; 20 looms, very good when new; some worn; but worth then, that is in April, 1839, $50 each; 1 warper, in good repair, worth somewhere about forty or fifty dollars; 1 grinder, I should think was worth perhaps then, $50; 14 cards, in the condition they were then in, worth about $100 a piece; 1 drawing frame, probably worth about $100; 1 Taunton speeder (I'm not positive about the number of spindles, probably there was about a dozen) worth about $15 a spindle; 1 spooler, in good order, except the cloth on the drums was somewhat torn, worth about $50; 1 regulator, in good order, worth about $50, I think; 1 dresser, I think worth about $350 at that time, pretty good; 1 picker, I think worth about $150; 1 whipper, worth about $50; and cans and spools and bobbins, I think ought to be worth about $250 or $300. There were two other speeders there, of the value of which I cannot judge, not being acquainted with that kind of speeder. They

...der; they were of the flyer speeder kind. ...mes, of 72 spindles each, in pretty good ...dition, and worth ... spindle at least, at that time, I should think.

Question 3. What difference was there in the value of the said machinery, when you last examined it, as compared with its value when you first examined it?

Answer. They seemed to have kept the machinery in pretty good order. It appeared to be worth about as much at the end of the Fenners' lease, as it was at the commencement, aside from the natural wear and tear. The memorandum referred to bears date April 25, 1839; I think it was made at the first examination, but I may be mistaken as to the date. My impression is, that I took no memorandum at the last examination. I have thought nothing of the matter since the examination, until last Saturday, when Mr. Almy's agent requested me to come here.

Question 4. Are you acquainted with the mill property where this machinery was?

Answer. Not particularly. It lies 7 miles from where I lived.

Question 5. What was the rent of mills, including fixtures and tenements, for cotton machinery, rated by the capacity per spindle, including preparation and looms, not including machinery?

Answer. There would be a difference, according to location and facilities for business. For mill establishments, of the size of the Lippitt mill, the price would vary from 50 cents a spindle to $1, within a circuit of six, eight, or ten miles from Norwich, Connecticut. The Lippitt mill was pretty well located, as regards transportation, being less than one quarter of a mile from the Jewett City depôt on the Norwich and Worcester railroad, and about eight miles from Norwich.

Cross examined by H. W. Potter, esq.

Question 1. You have spoken of a memorandum of the condition of the machinery made by you and Stillman; is the paper now exhibited, and marked by the master A, that memorandum?

Answer. It is. My impression is it was made at the first examination; but I may be mistaken.

Question 2. In whose handwriting is it?

Answer. It is in Mr. Stillman's hand. Each of us took a memorandum in pencil, at the time of examining, and afterwards we compared lists, and Mr. Stillman made the copy here exhibited.

Question 3. Was it not your only object to get the condition of the machinery at that time, so as to compare it with its condition at the end of the lease?

Answer. That was all the object, sir.

Question 4. Were the two flyer speeders, you have spoken of, in the mill at the time of the first examination?

Answer. I'm not positive as to that. They were there at either the first or the second examination. I'm not positive which. I had the impression they were there at the first examination.

Question 5. Was Stillman with you at your last examination?

Answer. Yes, he was. I've seen hi[illegible] was there only once. But I stated circum[illegible] recollection the fact that he was with me on both occasions.

Question 6. You have given here to-day your estimate of the value of said machinery in dollars and cents; had you made any such estimate before to-day?

Answer. No, sir.

Question 7. Has any estimate of said machinery been handed or shown to you by R. G. Hazard, esq., or any other person?

Answer. No, sir. There has not.

Question 8. How came you to make out such an estimate to-day?

Answer. Because I was asked the question since I came in here to-day. What I judged that machinery to be worth at the time.

Question 9. Had you conferred with, or been spoken to by, any person in relation to this subject, before you came into this room to be examined before the master?

Answer. Yes, sir, I had. By Mr. Hazard. He met me at the door as I came in, and wished me to get my mind made up, as near as I could, about the value of the machinery. This was pretty much all that passed between us. He left me in a few minutes and returned to this place, and I went into a neighboring store and looked over the memorandum, and then came here and testified.

Question 10. Did you make any minutes or memoranda about the value of the machinery before testifying?

Answer. I did, for my own accommodation, in the store above referred to.

J. W. THOMPSON.

A.

Paper referred to in foregoing deposition.

Memorandum of machinery in factory of I. Morgan and S. W. Fanning, Jewett City, April 2d, 1839.

2 mules, in order to run, top brushes and top rolls badly worn; 1 Mendozer wheel wants repairing, deficient of bands.
20 looms, rather shackling and worn.
1 warper, in good order.
1 grinder, in order.
7 breakers, 5 of which *has* clothing pretty good, and 2 broken.
7 finishers' clothing, pretty good, with the exception of some bad places in doffers; several nuts lost and some leather ones put on, some gears wanting.
1 drawing frame, good, except some gears wanted; and 1 top roller without cover.
1 Taunton speeder, with the worm nearly worn out, and some gears considerably worn.
1 spooler, in good order, except the drums want covering.
6 spinning frames, in fair order, with some broken flyers.
1 regulator, good.
1 dresser, the rollers want turning.

to run.
otherwise appears good.

J. P. STILLMAN,
J. W. THOMPSON.

Edward E. Manton's deposition.

Examination of Edward E. Manton, of Providence, examined by complainant. Questioned by R. G. Hazard, esq.

Question 1. How long have you been engaged in the manufacturing business?

Answer. I commenced business on my own account in July, 1830, and have continued it until the present time. In December, 1820, I first became acquainted with the business as a hired hand in a mill. And with the exception of two years, 1827 and 1829, was employed in manufacturing business from 1820, until I commenced on my own account, as already stated.

Question 2. How has the manufacturing been at different periods since 1830?

Answer. In 1830, it was rather improving, from its condition previously; in 1831 it was very good, and I think fair in 1832. I don't know that I recollect particularly how business was in 1833 as distinct from other years, but up to 1836, I think, it was rather an improving business. There was, I think, a period of depression in 1833 or 1834, but in which year I do not recollect. This depression was rather a sudden one; the cause I cannot now state. The reason I recollect this is, that I was in Baltimore at the time, and the statements made by my agents there were such as to induce me to hasten home, under a conviction that no more goods could be sold for a long time. This was the latter part of February or first part of March, 1833 or 1834, which, I cannot say. The business was very good in 1835 and 1836; the prices were good and sales quick. The prices of provisions, during these years, were high, and also the prices of other goods generally. They bore an inflated price. In the commencement of 1837, say in February, prices began to fall and became exceedingly low. In the latter part of 1836 goods brought 10 cents and 10¼. We sold from November 1, 1835, to January 1, 1837, under contract at 10 cents per yard on six months. The same kind of goods in June, 1837, sold in market at 6 cents. In the latter part of 1837, business began to improve, and in 1838 it was fair. As to 1839 and 1840, I have nothing particularly to say. I recollect no particular pressure in the market until 1842 and 1843. Business was bad in 1842, and worse in 1843. In May and June, 1843, the prices were at the lowest point.

Question 3. What was the rent of mills, water power, including fixtures and tenements for cotton machinery, rated by the capacity per spindle, including preparation and looms, within thirty to forty miles from Providence?

Answer. Some three or four years ago, I was looking for a mill at about that distance from Providence, and found that owners generally asked me about fifty cents a spindle. The buildings I looked at, which were offered at this rate, were substantial good buildings of brick or

stone. I don't know that I can say what [illegible] rent between brick and stone buildings and wooden. The [illegible] terially better for manufacturing purposes, and insurance can be obtained at less price. I have paid 2½ per cent. insurance on a wooden building (a mill) and 1⅛ per cent. on a stone one, erected afterwards on the same site. The price of insurance varies much with the arrangements in and about the building for heating, lighting, &c. There is a difference in the rates of insurance upon wooden mills and stone or brick mills; but the amount of difference I cannot state. We (Mantin, Kelly & Co.) now hire a mill in Smithfield, on the Chepachet road, about ten miles from Providence. It is a stone building of the first class. We have with it some fourteen tenements. We pay as rent $2,000, run 90 looms with preparation; operate, say 4,240 spindles. The fixtures and running gear are furnished us by the owners, and they keep them and the real estate in repair at their expense.

Question 4. What per centage, upon the value of cotton machinery, is a fair annual rent for the use of it?

Answer. I think a person could afford to let machinery at 10 to 12½ per cent. He would get by this about the interest of his money.

W. H. Potter, esq., for defence, waives cross examination.

EDWARD E. MANTON.

Tuesday, June 6, 1 o'clock, p. m.

Mr. Hazard, for complainant says, his testimony is now all in.

J. P. K.

States, also, a Mr. Ladd, from Worcester or Millbury, was expected; but he should not wait for him.

Alfred Ladd's deposition.

Examination of Alfred Ladd, of Millbury, Massachusetts, for the plaintiff. Questioned by R. G. Hazard, esq.

Question 1. Are you engaged in the cotton manufacturing business; if yes, how long have you been so engaged?

Answer. I am so engaged, and have been since 1823.

Question 2. Have you any knowledge of the machinery which was in the mill formerly occupied by Christopher Lippitt, in Jewett City?

Answer. I have. I went there in the spring of 1839 as a partner of Ezek. Hawkins in running the Lippitt mill. We hired it with machinery for two years, from the 1st of April, 1839, to 1st April, 1841, at $1,500 a year. I had the management of the mill.

Question 3. What was the value of the machinery in the mill at the commencement of your lease?

Answer. It must have been somewhere in the neighborhood of two-thirds of its original value. I could not particularly give an opinion on this point. My impression is it might be as I have stated.

Question 4. Can you state the number of machines of a kind in the mill, and the value of each?

Answer. I can give the number; but the value of them it is rather hard to get at. There was a whipper worth about $50. A cotton

much, as we put in, soon after taking the mill, a Whiting's lapper. This picker, I should'nt wish to price. It wasn't worth much, if any thing. 14 cards, worth, I should think, $100 a piece, clothing and all on, as they stood when we took them; 1 drawing frame, which might have been worth $200; 1 dresser, which might have been worth $250 as it stood there. I suppose you don't expect any thing definite about the value of these machines. I can only state what I think they were worth at the time. There were six throstle frames, making 432 spindles in all, worth, say $3 75 a spindle; 2 mules, 216 spindles each, worth $1 75 per spindle; 20 looms, worth $55 a piece; 1 warper, worth $30; 1 spooler, worth $50; 1 speeder, Taunton, worth $300; there were two other speeders which were laid by, not used, which I should not like to put a price upon, as I don't know what they were worth; and 1 regulator, which might be worth $50 at that time.

Question 5. How long will carding machines last, to run with ordinary repairs?

Answer. They'll last a great many years; the machine itself, with ordinary repairs, aside from clothing a machine, would last a hundred years, for aught I know.

Question 6. How long will looms last?

Answer. A good many years; I know of looms that have been running 25 or 30 years, that yet run very well; of course there have been repairs made upon them.

Question 7. How long will throstle frames last?

Answer. Well, I couldn't tell how long they'll last. I know of frames that have been running for twenty years. They worked very well when I last saw them, about a year ago; they were in good running order then.

Question 8. How long will mules last?

Answer. I know of mules that have been running the same time as the throstle frames above mentioned. They were, about a year ago, in good running condition.

Question 9. What was the condition of the mill building and water wheel, at the Lippitt establishment, in 1839?

Answer. The wheel was very much out of repair when we took the mill; we repaired it before starting. The building was an old building, not very good.

Question 10. What was a fair rent for the real estate, aside from the machinery?

Answer. $600, perhaps.

Cross examined by W. H. Potter, esq.

Question 1. Have you ever manufactured cotton machinery?

Answer. I have not.

Question 2. What amount of cotton machinery have you ever bought and sold?

Answer. I never have bought and sold but very little. I mean I have not dealt in buying and selling machinery. My business has been operating machinery—that owned by others, and which I hired.

Question 3. In the value you have g[illegible] above named, do you profess to be definite, so as to compel a [illegible] pay for them at those prices?

Answer. No, sir; I do not wish to be so understood; I merely give those prices as my opinion at the time, as the machinery then stood.

Question 4. You have spoken of some mules, &c., as running 20 years and upwards. Do you know how many men have failed by running said machinery?

Answer. I have never known any failing in the places where the machinery that I spoke of has been run. This machinery was not that which was at the Lippitt mill.

Question 5. Did you not fails, or stop payment, while running the Lippitt mill under lease, as stated in your direct examination?

Answer. I did not.

Question 6. What real estate had you under your lease?

Answer. My impression is, there were 10 acres of land and 4 dwelling-houses. The land flowed by water not included. There was a factory building, a picker building, and a cloth shop.

Question. Do you know that the machinery so hired by you was the same machinery which was in the mill in December, 1835?

Answer. I worked for Major Lippitt when he started the mill; and the same machinery was there in 1839, as near as I can judge. There were two flyer speeders in the card-room in 1839, which had been thrown by, and a leather apron speeder, which was in the mill when it was started, had been thrown by entirely. Before we hired two Field speeders had been put in, thrown by, and a Taunton speeder put in in their place.

ALFRED LADD.

Edward E. Manton's second deposition.

Second examination of Edward E. Manton, in rebuttal of defendant's testimony.

Questioned by R. G. Hazard, esq.

Question 1. Suppose cotton machinery to have been run from 1828 to 1836, what would have been its value, in 1836, as compared with its cost?

Answer. So much depends upon the build and the manner in which the machinery has been used, that this becomes a very difficult question. The difference in the build of machinery, between the two dates, would make a material difference in the value. At one period more wood was used *that* at a later when iron was substituted. Machinery built in 1828 would be less durable than that built in 1835. Within the period named, there were but two improvements of any particular note, namely, the introduction of the railway, in connexion with cards, and the introduction of ring spinning in 1830 to 1833. As to the latter, there is yet some doubt whether this is a great advantage. It has not been adopted by the majority of the manufacturers in this section of the country. As to what would be the value of machinery built in 1828, and run till 1836; I cannot speak so definitely as I can of the val-

date, and run for a like term of time. [illegible] machinery, built in 1835, up to the present time; and, by employing one hand upon it in repairing, it has been kept in good order, and is now doing as good work and producing as much as any machinery I know of. Our machinery comprises 2400 spindles. The cards have been reclothed once within the time. The cost of operating this machinery, at the present time, is no more than when it was new; that is, we can manufacture as cheaply with it now as we could when it was new. It does as much work, and as well as formerly. The wages of the man employed in repairing has been on an average seven shillings a day. Judging from the products of the machinery, I should consider this worth about as much as new; but its market value, I suppose, would be about ⅔ cost. I think it would sell for ⅔ cost.

The reputation of S Newell & Co., as builders, was good in the year 1828, and afterwards. They stood as high as any body. The machinery that I operate is of their make.

I am acquainted with the reputation of the Field speeders, and have seen them used. They stood as high as any speeder of the flyer class. There have been very great improvements in speeders since 1828, since the Field speeder was generally used. I do not know of any Field speeders now in use. I do not know up to what period Field speeders were used. The Field speeder makes better work than the Taunton speeder; but the labor using a Field speeder costs more than using a Taunton speeder. The Field speeder requires more power to operate it.

Cross examined by W. H. Potter, esq.

Question 1. You have spoken of your own machinery in reply to a general question. Take machinery by and large, made in 1828, and run eight years, with the average care machinery generally receives, what would be its market value compared with its cost?

Answer. I think it would have sold for full ⅔ of its cost in 1836, as circumstances then were—business good, manufactures extended, and prices high.

Question 2. Is not the price of cotton machinery generally understood from the price of spinning per spindle?

Answer. In speaking of a lot of machinery, the price of spinning per spindle is understood to refer to the machinery generally, and include it.

EDWARD E. MANTON.

Thomas J. Hill's deposition.

Examination of Thomas J. Hill, of Providence, for plaintiff, in rebuttal.

Questioned by R. G. Hazard, esq.

Question 1. Please state what you know relative to the time cotton machinery will run, and the value of cotton machinery, which may have been built in the year 1828, after it had been run for eight years?

Answer. Some kinds of machinery wear out much faster than others. For instance, whippers will wear out very quick; the [illegible] pickers, and some other parts of pickers, will wear out very quick. Speeders and mules will run a great many years, if well taken care of. Mules, with usual repairs, will last 30 years; and I've known them to be thrown out or laid aside after being used only six years. I now know of mules that are said to have been running since 1817—that is, same frames; they were thoroughly repaired in 1842. The spindles will not last more than 7 to 9 years, for fine work.

Throstle frames will last a great many years, if well taken care of and run at slow speed. I know of throstles, at Mannville, that have been in use since 1825–'6, to my knowledge.

Cards, with the proper repairs, will last a great while. At Lonsdale establishment I have known the boxes of cards to be worn down in three months; with proper care in oiling, &c., the same boxes would have worn fifty years. Spindles for mules cost 21 cents each. The boxes for cards above mentioned cost about 4 shillings each.

I shouldn't think that machinery built in 1828, and run till 1836, with ordinary care, would have brought more than 60 per cent. of its cost.

Mules in 1836 were 2.37½, and 2.62½ per spindle.

THOMAS J. HILL.

Gideon C. Smith's deposition.

Examination of Gideon C. Smith, of North Providence, R. 1., for plaintiff, in rebuttal.

Questioned by R. G. Hazard, esq.

Question 1. Please state what you know relative to the time cotton machinery will run, and the value of cotton machinery, which may have been built in the year 1828, after it had been run for eight years?

Answer. I have been an operator for upwards of 25 years. I think cotton machinery, well built, with ordinary repairs and proper care, will run 15 years. Then, I think, it would want a thorough repairing; and, receiving that, would run ten years more. At the end of that period I think it would be more profitable to procure new machinery than to use the old longer. It would be worth something then; but its value would depend a good deal upon the times. I know of machinery that I am told has been running since the year 1821. This is doing good work now.

From what I recollect, from 1828 to 1836, I should think machinery built in 1828, and run till 1836, would have been worth, in 1836, 60 per cent. of its cost, as the manufacturing business was quite prosperous in that year. As a general thing, however, I should think that machinery which had been run eight years would not bring more in market than 50 per cent.

I knew of quite a number of Field speeders in use in 1836. There were two in Almy & Brown's mill, of which I had care. These were not taken out till 1846, when geared speeders were substituted. For

well liked as the general run of belted [illegible] were most used in 1836, belted speed- or geared.

Cross examined by W. H. Potter, esq.

Question 1. What *was* new machinery frames worth in 1836?

Answer. I can't say positively.

Question 2. What was it worth in 1828?

Answer. I say as to the other question, I can't say positively.

Question 3. You have spoken of machinery running 15 years, and then requiring thorough repair; would it not require new spindles, boxes, and steps, before it had run that time?

Answer. I should think not, if well taken care of. It might require some new steps, but not a whole set.

Question 4. Is what you have stated founded on any thing besides your own personal experience and business?

Answer. Other manufacturers and machinists hold the same opinion as I do, as to the length of time machinery will run; but there is a great difference of opinion among manufacturers on this point, and they differ widely.

GIDEON C. SMITH.

Samuel Bailey's deposition.

Examination of Samuel Bailey, taken by plaintiff in rebuttal of C. H. Lippitt's deposition, which was taken in Wilmington, under a commission.

(Taken March 15, 1849.)

Question 1. When, as the attorney of Samson Almy, you demanded certain machinery of Peleg Wilbur, what was said by said Wilbur in relation to his possession or control of the same?

Answer. He said that he had possession of the machinery. I told him that I had a power of attorney from Mr. Almy to come to him and demand the machinery. I asked him if he would give the possession up to me, as the attorney of Almy. Then he said, no. I then said: You decline giving it up? He said: Yes. Then I told him I should go back and report to Mr. Almy that he admitted he had possession of the machinery, and declined giving it up. He said that he knew why I came and demanded it; he said it was for the purpose of bringing an action against him for the machinery. Well, I don't recollect any thing more.

Cross examined by W. H. Potter.

Question 1. Do you recollect the language which was used by you, and the language used by Mr. Wilbur, in the conversation relative to which you are testifying?

Answer. Well, I've just stated the language used by Mr. Wilbur as near as I can recollect, and I've told you the language used by me as near as I can recollect. Well, I don't think its exactly fair to question me about the exact words used. It is thirteen years ago, and I went there merely to demand the machinery, and what I have stated as being said by Mr. Wilbur I am positive Mr. Wilbur said, and am positive that what I have stated is true.

Question 2. Has any thing occurred [illegible] subject to recall the conversation to your recollection?

Answer. No, sir, not that I recollect of, excepting that Mr. Hazard called to see me some three weeks ago, and reminded me of the conversation. That's all.

Question 3. Was Mr. Hazard present at the time of the demand on Wilbur? If not, in what way did he remind you of the conversation.

Answer. He was not present; I said that Mr. Hazard's calling upon me reminded me of the conversation, as he said he should call upon me to come here and testify; Mr. Hazard was at my place of business but a moment, and we had no conversation about the subject; I had not until then thought of the conversation since I before testified; I think I had not thought of it since I testified before.

Question 4. Did he show you the testimony you before gave, or have you seen it recently?

Answer. Mr. Hazard did not show it me, but I called at the master's office by request of Mr. Hazard, and I there saw my deposition in print, within two or three weeks past.

Question 5. Did not Mr. Wilbur, in that conversation, say to you that he held a mortgage on that machinery with others, and that he claimed possession of the machinery, or words to that effect?

Answer. I don't recollect any thing of the kind.

Question 6. Did you not know that he had a mortgage upon that machinery, or had you not heard that he had?

Answer. I did not know the fact, nor had I then heard that he had a mortgage.

Question 7. Do you, or do you not, recollect that he stated by what tenure he held the machinery?

Answer. I don't recollect his stating how he held it; I don't think he said any thing about how he held it; if he had I think I should recollect something about it.

Question 8. By whose direction did you make the demand?

Answer. I made the demand by direction of Mr. Almy; I can't recollect that Mr. Hazard was present at the time; I don't think he was.

Question 9. Did you show to Mr. Wilbur your power of attorney when you made the demand spoken of?

Answer. I can't say about that.

Question 10. Do you know that you had the power with you at the time?

Answer. Yes, I had it with me, I think; I am very positive of having had it with me; I don't know but I did show it, but I've no recollection about it.

Question 11. Where was the power at the time of the conversation; in your pocket-book, hat, or where?

Answer. I carried it down in my hat, I think; I can say nothing more about it.

Question 12. Why did you bring the power with you?

Answer. Why, if questioned about my authority, I didn't want to have to go back after it; I don't know where that power of attorney is;

n it since it was given me and I did my

Question 13. Then you had a written power of attorney made to you as Almy's clerk to this errand, you think you put it in your hat, and went and made the demand without showing any authority to Wilbur to make it; and now, ten or eleven years after the conversation, can recollect all the particulars of the conversation, and have only an imperfect recollection of having the power with you, and of having shown it as you have stated. Is your testimony thus to be understood or not?

Answer. Yes, sir; it is to be so understood.

Question 14. Did you read the said power of attorney?

Answer. I did.

Question 15. Have you ever had any conversation with Mr. Hazard or Mr. Almy about this case, since Mr. Hazard called on you about three weeks ago as before stated?

Answer. No, sir; I've not seen either of them since, until to-day.

Question 16. What did you do with the power of attorney after you made the demand on Mr. Wilbur?

Answer. Well, I've no particular recollection; I probably put it in some safe place; probably in my draw in my office; I've not seen it since, as I have already stated; I don't recollect in whose handwriting was that power, nor what was the name of the witness to the signature of Mr. Almy, if any there was; it seems to me there was a justice of peace signed it; I don't recollect about it in particular; I know I examined it at the time, and it was a regular power; I was not present at the execution of the instrument.

Direct resumed. Questioned by R. G. Hazard, esq.

Question 2. Has, or has not, search been made for the power of attorney above named?

Answer. Search has been made for a memorandum I made of the conversation with Mr. Wilbur, but as to searching for the power of attorney, I don't recollect.

Questioned by W. H. Potter, for defendant.

Question 17. By whom was the memorandum you speak of made, and where was it when you last saw it?

Answer. It was made by me; I don't recollect seeing it since I made it; I made it as soon as I returned from the hotel where I saw Mr. Wilbur.

SAMUEL BAILEY.

Asa Fenner's deposition.

Deposition of Asa Fenner, of Jewett City, (to be used in said case) called by complainant. Question by R. G. Hazard, for complainant.

Question 1. Did you ever hear Peleg Wilbur state at what time his possession of the mill property, known as the Lippitt mill, at Jewett city terminated?

Answer. I was at the cloth house [illegible] Joshua, soon after the decision of Mr. Wilbur's case with the [illegible] Chris. Lippitt, (Mr. Wilbur managed it, but it was Mr. Harris's case I believe;) he demanded rent of my brother for the use of the tenement he occupied from the time he, my brother, surrendered up the mill in August, 1836, to the time that Messrs. Morgan & Fanning took possession in the spring of 1837, some seven months I think, or a little more; Mr. Wilbur stated that his possession then terminated; my brother refused to pay rent; Mr. Wilbur cannot help recollecting it, because they had quite a warm controversy; my brother said he had paid the rent to Mr. Lippitt; he kept some boarders who worked for Mr. Lippitt, and the rent was paid in settlement for the board; Mr. Wilbur still insisted on the payment, and said he was the proper person to pay it to, because he held possession of the property until Morgan & Fanning took possession in the spring of 1837; he threatened to collect it of my brother if he did not pay it to him; my brother told him that he had paid it to Major Lippitt, and that Major Lippitt (that is, Christopher Lippitt) had sworn that Mr. Wilbur had authorized him to collect the rent for the use of the tenement he (my brother) occupied.

Question 2. Where was this tenement?

Answer. It was on the mill property, and near the mill.

Question 3. Do you know on what occasion Major Lippitt swore that he was authorized by Mr. Wilbur to collect this rent?

Answer. It was in a case of my brother against Stephen Tefft for the collection of bill for boarding two or three of his daughters; my brother refused to apply the rent to the board, and claimed that Major Lippitt was not the proper man to pay it to, and in that suit Major Lippitt swore that he had the authority from Mr. Wilbur, and the case was decided against my brother in consequence of this offset.

Cross examination by P. Wilbur.

[Question.] Will you now exhibit the book containing the account of manufacturing while your brother ran the mill—the account which you kept at the store?

Answer. I will show it to you at my store.

Direct resumed.

Question 1. Did you keep the accounts in said book for your brother, and to whom was the manufacturing charged?

Answer. I did, and the manufacturing was charged to Peleg Wilbur.

Question 2. At what time did said account against Peleg Wilbur for manufacturing terminate?

Answer. The last date is 13th of August, 1836, which I think is the time Peleg Wilbur and my brother settled; it was but a few days after my brother stopped manufacturing for Mr. Wilbur before they settled the account.

ASA FENNER.

New London county, ss.

At Griswold, the 18th day of September, A. D. 1848.

Then appeared the afore named Asa Fenner, and after being carefully examined, cautioned, and sworn, that the answers he should give to the questions that should be propounded to him should be the truth, the whole truth, and nothing but the truth, gave the aforegoing deposition which was reduced to writing in my presence, and by said deponent subscribed in my presence. Taken at the request of Rowland G. Hazard, esq., agent or attorney for the plaintiff, to be used in a hearing before John O. Knowles, esq., master in chancery, in the case of Sampson Almy vs. Peleg Wilbur, now pending in the circuit court of the United States, for the district of Rhode Island. The adverse party was not by me notified of the time and place of taking this deposition, but was present and signified his assent to the taking of the same. Before me,

ARNOLD BOWEN,
Justice of the Peace.

Fees.—Taking deposition $0 75
Deponent's fee - 0 39

$1 14

Paid by R. G. Hazard.

Samuel Morgan's deposition.

I, Samuel C. Morgan, of Norwich, in New London county, State of Connecticut, of lawful age, depose and say, that after the conveyance made by Christopher Lippitt, of Griswold, in said county, to Peleg Wilbur and others, by deed of mortgage dated December 8th, 1835, of his property in said Griswold, as security for the payment of sundry debts due from him to them, I was employed as counsel for sundry creditors of the said Lippitt to secure debts due from him to them, which had not been provided for in said mortgage, suits were instituted by me on said claims, and his, the said Lippitt's, property attached, subject to the previous claims upon it, which suits were prosecuted to judgment and execution. In the month of March, 1836, the said Lippitt made an assignment of his property under the insolvent laws of this State, to James Stedman and Charles P. Huntington, as commissioners for the benefit of his creditors, and in the month of October, 1836, and on the 15th day of said month, as this deponent verily believes, said commissioners, at public auction, sold the equity of redemption of the said Lippitt in the real estate and machinery, to John W. Fanning, of said Griswold, for himself and other creditors who had entered into the arrangement of paying their proportion of the purchase money; said purchase was made by my advice, and with the understanding that I was to take an interest in it. Afterwards, I think on the 27th day of October, I drew up an instrument of surrendry of possession

and lease of the property, which was [illegible] the said Fanning, which instrument, [illegible] until the 4th day of August last, has been in my possession, at which time I delivered the same over to Andrew C. Lippitt, esq., who requested it of me in behalf of his uncle, Peleg Wilbur, a copy of the same I had previously furnished him, under which instrument I have no recollection that any actual possession was taken by the said Fanning, or by any other one in his behalf, as he would not have been likely to have done it without my advice, as I was ultimately to be interested in the property.

This deponent, jointly with Elias Brewster, of said Griswold, held a mortgage on said Lippitt's property prior to that of said Wilbur's and others, but subsequent to an outstanding mortgage in favor of Messrs. Trumbull, Breed & Wight, on which two mortgages there was due about eight thousand five hundred dollars as this deponent now recollects; which last mentioned mortgage, and the said Brewster's interest in said joint mortgage, were purchased in by this deponent and the said Fanning, and were ultimately conveyed to them as were all the other interests in said property. On the 22d of March, 1847, after actual possession had been taken of the factory and machinery by virtue of an execution in ejectment against the said Lippitt, when the said Wilbur and other mortgagees in said mortgage were required to account by a petition in chancery for the rents and profits of the property while in his possession as one of the mortgagees, and as attorney for the other mortgagees in the mortgage made to him and others, a written agreement was entered into between the said Wilbur, for himself and others named in said mortgage, and myself, and as attorney for the Jewett City and Windham county banks; also an agreement on the back of the same, between the said Wilbur and John W. Fanning, as the basis of the settlement upon certain conditions contained therein; and at this remote period this deponent cannot say whether the settlement for the rents was in exact conformity to said writings, but presumes that it was, as he does not now recollect any thing to the contrary. This deponent well recollects that no rents were received or accounted for by any other person with him, except by the said Wilbur for the use of the property from the time the said Wilbur took possession for himself and as attorney for the other mortgagees, to the time of the taking possession under the execution. Afterwards, in December, 1837, a full settlement was made as to the amount of rents to be allowed and deducted from the debts secured in and by said Wilbur and others' mortgage, according to the aforesaid basis, as this deponent now believes; and a release deed of all the real estate, and a conveyance with covenants of warrantee of the machinery, tools, &c., were executed by the said Wilbur, and as attorney for the other mortgagees, and delivered to the said Morgan and Fanning. The lease hereinbefore referred to is attached hereto, marked C. The agreements above referred to by this deponent as constituting the basis of the settlement for the rents and profits, marked A, is hereto attached. And further this deponent saith not.

SAM'L C. MORGAN.

[illegible] referred to in foregoing deposition.

Whereas a petition is now pending before the superior court, now in session at Norwich, in behalf of the Brooklyn and Jewett City banks and Samuel C. Morgan, against Peleg Wilbur and others, in which petition the said Wilbur is required to account for the rents and profits while the mortgaged property was occupied by him. Now, it is agreed by the said Wilbur, and the said Morgan, as attorney for the petitioners and for himself, that the said Wilbur pay the sum of eight hundred dollars for the rent of the property from the time he took possession of the same as one of the mortgagees in December, 1835, to the 15th October, 1836, when the equity of redemption was sold; which sum I, the said Wilbur, agree to account for to the mortgagees, or in such way as the court shall order; the premium paid for insurance is to be deducted out of said sum, and nothing else, and the residue is to be applied to the extinguishment of the mortgage debt, as may be agreed between the parties, or as the court shall order; which sum, when accounted as aforesaid, the said Morgan, as attorney to said banks and for himself, agrees shall be good accounting for the rents, &c., during the time aforesaid. The said Wilbur acts in behalf of himself and for the others interested in said mortgage deed, excepting said banks and the said Morgan. The said Wilbur claims that he ought to account for said sum towards the extinguishment of the debts of those morgagees only for whom he acted under a power of attorney; but the said Morgan claims that all of the mortgagees, or those interested in said mortgage deed, should participate equally in said sum; but this, if not agreed upon by the attorneys employed, the court is to decide. March 22d, 1837.

SAM'L C. MORGAN,
For himself, and attorney for said banks.
PELEG WILBUR,
For himself, and for those for whom he has power to act.

It being a part of and a consideration of the within arrangement, that the said Wilbur pay the sum of two hundred dollars to John W. Fanning, esq., to whom the mortgaged property was surrendered after he purchased the equity of redemption for and in behalf of certain of the attaching creditors, as a rent for the same during the time said property was improved by his brother-in-law Christopher Lippitt, under a lease from the said Fanning, which sum is not to be paid by the said Wilbur unless the within arrangement be carried into effect and accepted by the court; and when said arrangement is carried into effect, in consideration thereof, and of the said Lippitt's improving the property as aforesaid under said lease, I agree to pay said Fanning said sum on demand, with the interest and the stores and property taken by said Fanning of me, the said Wilbur; a bill of which is made, amounting to the sum of fifty-six $\frac{44}{100}$, is to be deducted from said sum; but in case this within arrangement is not carried into effect, the above is to be null and void; and in that case, the said Fanning agrees to pay said Wilbur for said stores, &c., as per bill, amounting to fifty-six $\frac{44}{100}$ dollars, which rent is to include the rent of house to April 1st, 1837, and

of factory, &c., until the time the prope
ning, about the 14th March, 1837.

PELEG WILBUR,
JOHN W. FANNING.

Paper C, referred to in foregoing deposition.

Know all persons to whom these presents shall come: That, whereas John W. Fanning has purchased in the equity of redemption in and to the following property, situated in Griswold, in the village of Jewett City, of which I am now in possession, bounded and described as follows, viz: The first tract is bounded northerly by the turnpike road, easterly by land of John W. Fanning, southerly and westerly by land of John Slater, with a dwelling-house, barn, and other buidings thereon, it being the place where I now live. The second tract is the factory property and privileges, bounded southerly by the road leading to Pachong meeting-house, southerly by land of Doctor Lucius Tyler, easterly by land of said Tyler and land of Thomas H. Wilson, and northerly by land of the said Wilson, and land now in the possession of Andrew Lamb, in right of his wife, with a cotton factory, the machinery therein, four dwelling-houses, and other buildings thereon, containing about six acres, with all the privileges thereto appertaining, all of which property I hereby surrender up to the said Fanning, and give him the possession of the same, and I do hereby agree from this time to occupy and possess the same under the said Fanning, and pay him a reasonable rent therefor. And I, the said Fanning, do hereby agree to permit the said Lippitt to occupy and improve the premises for one month from this day, he rendering and paying me a reasonable rent therefor; he, the said Lippitt, keeping the premises in repair, and improving the same according to the rules of good husbandry.

I, the said Lippitt, do agree on my part to occupy and improve the premises in a husbandlike manner, and to keep the same in repair, and pay the said Fanning a reasonable rent therefor, and peaceably to surrender up the possession of the same at the expiration of one month.

In witness whereof I hereto set my hand, this 27th day of October, 1836.

CHRISTOPHER LIPPITT,
JOHN W. FANNING.

STATE OF CONNECTICUT, *New London county, ss:*
NORWICH, *September* 2, A. D. 1848.

Be it remembered, that on the day aforesaid, Samuel C. Morgan, who hath subscribed the foregoing deposition, appeared before me, and after being cautioned to speak the whole truth, made solemn oath to the said deposition, which, by agreement of the parties, is taken to be used in an action now pending in the circuit court of the United States, for Rhode Island district, John P. Knowles, master in chancery; in which action Sampson Almy is plaintiff, and Peleg Wilbur is defendant. The parties with their counsel were present. And I certify, that the writings referred to in the deposition, and marked

to this deposition; and that the said defendant, by his counsel, objected to the said writing marked A being attached to, or being part of, said deposition. Said deposition drawn up by the deponent and certified by me.

And I further certify, that said deposition is drawn up and certified in manner required in the courts of this State.

GEORGE PERKINS,
Justice of the Peace.

Memorandum from Washington Insurance Co.

Copy of receipt given on settlement of loss of the mill and machinery insured for account of Samuel C. Morgan and J. W. Fanning, at the Providence Washington Insurance office, per policy No. 6117, made on application filed, No. 2150, signed by Christopher Lippitt.

PROVIDENCE, *March* 26, 1844.

Received of Providence Washington Insurance Company thirty-five hundred dollars, in full discharge of our claim for loss of the within insured mill and machinery, which was destroyed by fire on Sunday, 18th February last.

(Signed) SAM'L C. MORGAN.
JOHN W. FANNING,
By his attorney, Samuel C. Morgan.

Five hundred dollars was deducted from the amount insured, on account of the mode by which the mill took fire.

Attest: SULLIVAN DORR,
Pres't Prov. Wash. Ins. Co.
WARREN S. GREENE, *Secretary do.*

Filed by plaintiff, and received as sworn to by consent.
J. P. K., *Master.*

Defendant's testimony in the hearing before the master.—William J. Harris' deposition.

Examination of William J. Harris, of Providence, for defendant.

Questions by William H. Potter, esq.

Question 1. Did you at any time make a contract with Christopher Lippitt for the manufacture of cotton cloth at his mill, in Jewett City; if yes, when did the contract begin and end, and what were the terms of the contract.

Ans. I did. It commenced in March, 1836, and continued, I believe, more than a year—a year and a half or so; (witness produces his letter book.) On reference to my letter book, I find that the first letter to Mr. Lippitt in reference to the said contract is dated March 19th, 1836, and also find letters which satisfy me that the contract continued only one year. Under that contract I was to furnish the cotton, sell the goods, and receive 5 per cent. for doing the business. The property of the cotton was at all times to remain in me. The cotton was sent by me invoiced, to be manufactured and to be returned to

me; and on receipt of it I was to make [illegible] a certain per centage. What that per centage was, I cannot now state positively. When the contract was made ⅞ goods were manufactured. I afterwards recommended a change to ¾ goods, and at the time estimated the cost of manufacture to be two cents a yard. The business was done by correspondence, and I've no recollection of seeing Mr. Lippitt at any time while the contract existed. All the correspondence was with Major Lippitt himself.

Question 2. Did Mr. Lippitt manufacture for you under said contract during the time above stated?

Answer. Yes, sir.

Question 3. *Was* you at any time clerk for Samson Almy, or Almy & Brown; if yes, did you at any time hear said Almy state the object or reason of his furnishing cotton to said Lippitt to manufacture?

Answer. I was clerk for Almy & Brown from 1826 to 1834. Samson Almy was also a clerk of Almy & Brown, and managed their business, and did his business in their counting room. I was clerk for him incidentally, until he employed another, which he did about 1830. I am not certain as to the time when he employed a clerk especially for himself. His counting room, after he employed a clerk of his own, was in a room adjoining that of Almy & Brown, on the same floor.

It was always understood in the counting room that Mr. Almy supplied Mr. Lippitt's mill in order to recover a debt. R. G. Hazard & Co. owed him for wool bought in Boston. This understanding I got from Samson Almy, in the counting room, from his directions to me as to the business.

I always understood from Mr. Almy that this was the only mode he had of recovering that debt. I know of the purchase of the wool, and that Mr. Almy gave his notes for the whole amount, and took Messrs. Hazards' notes for their part. The wool purchased was divided between Mr. Almy and the Hazards. In what proportion, I cannot say.

Question 4. Has Rowland G. Hazard called upon you in relation to giving testimony in this cause within a few days; if yes, what was said by him and you?

Answer. He called upon me some little time ago to give my testimony here, and at his request I acknowledged service of a summons to a hearing before the master, a week or two ago. Yesterday and to-day he wished to see a letter from Peleg Wilbur to me in relation to the payment by me of money to Mr. Joshua Fenner.

Cross examined by R. G. Hazard, esq.

Question 1. In answer to the 3d direct question, did you not say that a part of the conversation in the counting room was that the Hazards owed S. Almy, and that this mill was all they had in their reach to pay him, and he took it, or words to that effect?

Answer. I can't say that I used these words, but these words contain the substance of what I understood to be the fact. By the word mill, I of course mean the contract for the supplying of the mill, and

not the least. I did not understand at the time that Mr. Almy had any right of property in the mill or the machinery, but simply had the run of it, in this way, to get his debt.

Question 2. When and where did you first see Christopher Lippitt in relation to making the contract of March, 1836?

Answer. That question is already answered. I don't remember of seeing him at all in relation to it. I might have seen him, but believe, as I have already stated, the arrangement was entered into by correspondence.

Question 3. Was your letter of March 19th, 1836, before or after the contract was made?

Answer. That letter contains the terms and conditions upon which I proposed to do the business, and these were probably acceded to. I find nothing more about it in my letters. It was while making the contract.

Question 4. At what time did you receive a reply to said letter from Christopher Lippitt?

Answer. My next letter to him is dated 25th of March, acknowledging the receipt of his letter of the 24th. Whether that was in reply to mine of the 19th, I can't positively say; but I suppose it was.

Question 5. Do you know that you ever did receive a letter from Christopher Lippitt, acceding to the terms proposed in your letter of the 19th March;

Answer. I suppose I did; I can't say positively that I did, without referring to my file of letters. The business was done according to the terms stipulated in my letter, both by myself and by Mr. Lippitt.

Question 6. How came you to write him in the first place?

Answer. I answer in the words of my letter, as I find it in my letter book: "I have just had a conversation with Col. Wilbur respecting furnishing stock for your mill, which business is now done by him, he being desirous of relinquishing it."

Question 7. Did you not, in fact, fix the terms of that contract with Peleg Wilbur?

Answer. I've no recollection of doing so.

Question 8. Can you state that you did not fix them with him?

Answer. I can only say that I don't recollect fixing them with him. I don't wish to say positively that I did or did not do any thing a dozen years ago.

Question 9. Did you not, for a long time, have the impression, and so repeatedly state, that the contract was with Peleg Wilbur?

Answer. I've no recollection of any such statement or understanding on my part.

Question 10. Did you not, about three weeks ago, state that you thought Peleg Wilbur made the contract to aid Christopher Lippitt; and did you not, within a few days thereafter, state to the plaintiff and R. G. Hazard, in the room adjoining that in which we now are, that you found, on reference to your letter book, that the correspondence was principally with Christopher Lippitt?

Answer. I don't remember ever stating that Mr. Wilbur ever made

the contract. I do recollect that I told Mr. Almy and Mr. Hazard that I found by my letter book that the correspondence was with Christopher Lippitt.

Question 11. Did you say, in the conversation above referred to, that the correspondence was with Christopher Lippitt, or did you use some qualifying words, as "principally," "mainly," or the like?

Answer. I don't remember any particular words used in the conversation.

Question 12. At what time did you change the style of the goods?

Answer. I cannot tell without referring to my invoices.

Question 13. How did the business result?

Answer. My accounts don't show whether there was a profit or loss on the business.

Question 14. At the winding up was there any balance either way?

Answer. There was a small balance against the mill.

Question 15. How was it settled?

Answer. By draft on Peleg Wilbur; my draft.

Question 16. Did he pay the draft?

Answer. I presume he did; I never heard from it; never had notice of its dishonor.

Question 17. Did you pay any money to Joshua Fenner for manufacturing at said mill; if yes, when, how much, and by whose order?

Answer. I paid Joshua Fenner, as appears by his receipt, dated August 24, 1836, $1,293 75; this payment I made upon receipt of the two papers now submitted to the master; one purporting to be signed by Peleg Wilbur, the other by C. H. Lippitt, (marked by the master A and B.)

Question 18. Is the letter purporting to be signed by Peleg Wilbur in his handwriting, and signed by him?

Answer. I suppose it to be, but I am not sufficiently familiar with his handwriting to testify positively to it.

Question 19. To whom did you render your accounts under this contract?

Answer. I do not know; I do not know that I ever rendered any.

Question 20. Did any one ever examine your accounts in your counting-room?

Answer. I remember no such examination.

Question 21. Have you any writing of any kind, showing that Christopher Lippitt made this contract with you?

Answer. I don't know that I have his assent in writing to the contract; I have his letters written about the time of this contract; their contents I don't know or remember; these letters are at my house.

Direct examination resumed by W. H. Potter.

Question 5. Did not Peleg Wilbur guarantee the performance of this contract by Christopher Lippitt?

Answer. Mr. Wilbur gave me his verbal guarantee to make good any loss to me by that contract.

Question 6. You have spoken of a balance against the mill, and a

draft upon Peleg Wilbur, which was the amount of that balance, and was not that draft for $14 00 and that balance?

Answer. The balance was $14 and some cents, and the draft was for the exact amount of the balance.

Question 7. Was or was not this draft made upon Mr. Wilbur under and in virtue of the verbal guarantee you have spoken of?

Answer. It was made in virtue of that guarantee.

Cross examination resumed by R. G. Hazard, esq.

Question 22. Did you confer with Peleg Wilbur in regard to the change in the style of goods, as mentioned in your direct examination?

Answer. I don't remember that I did.

WILLIAM J. HARRIS.

January 8, 1848.

Mr. Harris, recalled by the defendant, says that the two letters (marked 1 and 2 by the master) now produced and exhibited are the letters from Christopher Lippitt, to which he refers in his testimony above written.

Mr. Hazard, for complainant, objects to the receiving of those letters, if offered to show that Mr. Wilbur had no control of the machinery at the date of said letters.

Letter A, referred to in Wm. J. Harris' testimony.

JEWETT CITY, *August* 18, 1836.

Mr. WILLIAM J. HARRIS.

DEAR SIR: The man who has been running the mill at this place has declined going any further. I am obliged to leave here this day, and before a settlement can be closed with him. Christopher H. Lippitt will finish the settlement, and I have ordered him to give an order on you for the balance, which you will please pay.

Respectfully, yours,

PELEG WILBUR.

(Superscribed) Mr. WILLIAM J. HARRIS, *Providence.*

Letter B, referred to in Harris' testimony.

JEWETT CITY, *August* 20, 1836.

Mr. WM. J. HARRIS.

DR. SIR: Agreeable to my uncle Wilbur's request enclosed, I have settled with Mr. Fenner, and find a balance due him of $1,293 75, which you will please pay to him.

Respectfully, yours, &c.,

C. H. LIPPITT.

PROVIDENCE, *August* 24, 1836.

Received of William J. Harris twelve hundred and ninety-three $\frac{75}{100}$ dollars, cash, in full for the balance due me as above stated.

$1,293 75. JOSHUA FENNER.

(Superscribed) Mr. WM. J. HARRIS,
City Providence.

No 1, *referred to in Ha[illegible]*

JEWETT CITY, *March* 24, 1836.

WILLIAM J. HARRIS, ESQ.

DR. SIR: Yours of the 19th instant, upon the subject of furnishing stock for my mill, was duly received. The arrangement you propose to make will be agreeable to me in every respect, except that I should want you to advance me more than just enough to pay the expenses of manufacturing. I shall depend on the business for the support of my family; and would you not make me such advances as I should need, provided that the goods in your hands made you secure?

You suggest the expediency of changing to ¾ printing cloth. My slugh is 48, and the change could be made without much expense, but I could not weave all the yarn I should make on what looms I now have, and it would cost me as much to make the yarn for the looms to weave ¾ cloth as it does now to make ⅘. Unless I could have looms enough, the ¾ cloth would cost too much to manufacture it. If you should furnish me with stock, could you not furnish me with 2 pair of looms on hire? If the change was made to ¾ goods, these would be necessary to weave all of the yarn.

You can draw such an agreement as you should be willing to enter into, and forward it by mail; and, if there is nothing exceptionable in it, I will sign it and return it. I should want to enter upon the contract immediately, or as soon as week after next. I should not want to have it known that I was interested in the sale of the goods; let it be understood, if any inquiry is made, that I manufacture for you on a contract.

Respectfully, yours, &c.,

CHRISTOPHER LIPPITT,
By C. H. LIPPITT.

In your letter to my father you inquire whether I am still in want of business, and write that you shall want a clerk about the first of May. I am not engaged, and should be happy to enter your service as clerk, if your business will afford to pay me a sufficient salary. Please inform me what you can afford to pay the first year, and what the prospect will be for the next.

Respectfully, yours,

C. H. LIPPITT.

(Superscribed,)
Jewett City, Ct., March 24. 10
WILLIAM J. HARRIS,
City Providence, Rhode Island.

No 2, *referred to in Harris' testimony.*

JEWETT CITY, *March* 31, 1836.

WM. J. HARRIS.

DR. SIR: I was not at home when your letter of the 25th instant arrived, or it would have been answered by the first mail. I do not think a written contract important; the business is as well understood between

1844.

...ently explain each interest in the business, and the manner it is to be conducted.

Without further explanation, if agreeable to you, I am ready to enter upon the business. If the sloop Admiral, of Norwich, is in Providence, you may send a lot of cotton by her. I cannot conveniently change to ¾ goods before the stock of Colonel Wilbur is run out. As soon as your stock arrives, I shall try the change. You inquire if I can spin 24, 26. I think I can; my machinery is as well calculated to spin those numbers as coarser. The looms I shall not want immediately; shall want to get things a little regulated first. I hope you will send pretty good cotton the first lot; for, while changing the yarn to fine numbers, it will work bad unless the cotton is good, the yarn being of different sizes, and the help get discouraged before the change is effected.

Respectfully, yours,

CHRISTOPHER LIPPITT.

I cannot come for $350.

C. H. LIPPITT.

(Superscribed,)

Jewett City, March 31. 10

Wm. J. Harris, esq., *city Providence, R. I.*

James G. Anthony's deposition.

Examination of James G. Anthony, of Providence, for defendant.

Question by Wm. H. Potter, esq.

Question 1. Are you a manufacturer; if yes, how long have you been engaged in the business of manufacturing, and are you practically acquainted with the cost and *and* value of cotton machinery?

Answer. I am a manufacturer, and have been in the business for the last twenty-five years, at least for the last eighteen years agent of the Coventry Manufacturing Company; I have bought and sold cotton machinery frequently, and consider myself to be practically acquainted with the cost and value of it.

Question 2. What was spinning throstle frames worth, new, in the fall of 1836?

Answer. I can't recollect distinctly, but according to my recollection they were worth $4 50 or $5 per spindle; they have fallen in price since.

Question 3. What were mules, new, worth at the same time?

Answer. I can't recollect very distinctly so long ago, but I believe they were about $2 or $2 25 per spindle; the price of machinery of course varies from time to time, according to the demand.

Question 4. What was the cost or value of looms, new, at that time?

Answer. According to the best of my recollection it was $80 to 90 dollars at that time; first rate looms.

Question 5. What was the value of common 18 inch cards?

Answer. I'm less conversant with cards than any other kind of ma-

chinery; I can't speak with any certainty [illegible] time.

Question 6. Suppose the above described machinery to have been in operation eight years, what per centage of their value would it have lost?

Answer. This would depend much upon the care it had received; with only ordinary care, it would have materially diminished in value; I should think that machinery which had been used eight years would not be worth more than one-third its original value, taking into view the natural wear and tear, and the improvements made in machinery; we, in estimating our machinery for our purposes, make a greater deduction than this; old machinery can always be sold, sometimes for more than it is worth; but for practical purposes, I do not think that after eight years use it is worth more than is stated already, one-third cost.

Cross examined by R. G. Hazard, esq.

Question 1. Do not many manufacturers estimate old machinery, for practical purposes, higher than you have done in your direct examination?

Answer. I cannot say how other people estimate it; but I should infer some people do estimate it more highly, from the fact that they run their machinery so much longer than I do mine.

Direct examination resumed by W. H. Potter, esq.

Question 7. Do not many manufacturers at Lowell and elsewhere estimate old machinery lower than you have done in your examination above?

Answer. I should think they did at Lowell, as I am informed that they use their machinery there but eight years; my information is, that in England they use their machinery for a less time than American manufacturers; they break it up instead of selling it, in England, after about eight years use.

JAMES G. ANTHONY.

Cyrel Babcock's deposition.

Examination of Cyrel Babcock, of Providence, for defendant.

Examined by Wm. H. Potter, esq.

Question 1. Are you a manufacturer of cotton machinery; if yes, how long have you been engaged in that business, and are you practically acquainted with the cost and value of cotton machinery?

Answer. I am engaged in the manufacture of cotton machinery; I have been so engaged since 1830, and am somewhat acquainted with its value.

Question 2. What was the value of throstle frames, new, in 1836?

Answer. In 1836, my charge was $5 per spindle.

Question 3. What was the value of new mules at that time?

Answer. It was $2 25 per spindle.

Question 4. Suppose the same to have been operated eight years, what would be its value as compared with its original value?

...ficult question to answer; it depends on ... whether the machinery was substantially made, and what speed it had been run; whether it had been properly taken care of, and whether the necessary repairs had been made to keep it in good running order; it may be comparatively worthless at the end of eight years, or it may be worth ¼ or ⅓ of its original value, depending on the manner in which it was made, the speed at which it had been run, and the care which had been taken of it, and the repairs which it had received. In 1836, we purchased some mules that had been run 10 years, at 25 cents the spindle, original cost $2 37½, taking them in part pay for new machinery; we thought we allowed for them full as much as they were worth; these mules had been rather neglected; if they had been repaired at the time, or shortly before we took them, to the amount of 50 cts. the spindle, they might have run well for six years longer, as some parts of them were good.

Question 5. What was the value of new looms, in 1836?

Answer. It was from 65 to 70 dollars, depending on the work put upon them.

Cross examined by R. G. Hazard, esq.

Question 1. Do you mean that under no circumstances would machinery at the end of eight years be worth more than ¼ or ⅓ of its original value?

Answer. It might, by extra care and extra repairs, be worth a trifle more than ¼ or ⅓, but as a general thing my statement as made above would, in my judgment, be as near correct as can be.

Question 2. What was the quality of the machinery built by Stanford, Newell & Co.?

Answer. It was generally considered good, I believe.

Question 3. Do you know how the prices of Newell & Co., in 1836, compared with yours?

Answer. I do not particularly, I could not tell without referring to the books of Newell & Co., and my own.

Direct examination resumed by Wm. H. Potter, esq.

Question 6. Have you any knowledge of the quality of Newell & Co's machinery except from hearsay?

Answer. No, I have not; I never examined but a little of it.

CYRIL BABCOCK.

Deposition of Christopher Lippitt.

Examination of Christopher Lippitt, of Westerly, R. I., for defendant.

Mr. Hazard, for compl't, objects to the examination of this witness, on the ground that he has once given a deposition in the cause.

Mr. Potter replies for complainant, that he proposes to examine the witness only in regard to the interest in and control over the machinery by Peleg Wilbur.

Thereupon the master directs that the interrogatories proposed to be propounded to Mr. Lippitt be reduced to writing, which being done,

and these exhibited to Mr. Hazard, &c., that they be put to the witness, waiving [illegible] to them, but reserving his right to cross examine the witness.

Questions propounded by Wm. H. Potter, esq. (See paper marked A, attached.)

Question 1. Have you heretofore been called as a witness in the cause, Samson Almy vs. Peleg Wilbur?

Answer. I have.

Mr. Hazard here interposes, and asks witness:

Are you interested in the result of this suit?

Answer. I have no interest in it whatever.

Question 2. If Peleg Wilbur, and others, to whom you mortgaged, do not receive their pay from the mortgaged property, will you not still owe them?

Answer. I shall not; I have taken the benefit of the United States Bankrupt law, and do not owe any body.

Question 3. Did you put them upon your list of creditors, and did they have notice of your petition in bankruptcy?

Answer. They were all put into the list, and all had notice agreeably to law.

Question by Wm. H. Potter, esq., for defendant.

Question. Had or had not the claims of the creditors, Wilbur and others, just now referred to, been paid by the proceeds of the said mortgaged property, prior to your petition for the benefit of the bankrupt law.

Answer. I mortgaged that property to Wilbur and others, and I suppose they were paid out of the property. All the creditors that I owed were named in my list, and they were all notified by letter.

Question by Mr. Hazard. Were or were not the names of Peleg Wilbur and his co-mortgagees on your list of creditors in your bankrupt petition?

Answer. I can't say positively, but I think they were not—receiving their pay before. I rather recollect, however, notifying my brother, who is one of the mortgagees, by letter, and I presume I also notified the others.

(Mr. Hazard now objects to the witness, on the ground that it does not appear that the aforesaid creditors, Wilbur and his co-mortgagees, were named in the witness's list of creditors in his bankrupt petition.) The objection is overruled, and the examination upon the interrogatories proposed is resumed.

Question 2. Please state particularly what knowledge you have, if any, of said Wilbur's having the possession or control of the machinery mentioned in the bill and answer in this cause, for about a year subsequent to, or about, the month of March, 1836?

Answer. He had no control at all, and had no possession of said machinery at the time named.

Question 3. If said Wilbur had not the possession or control of said machinery at any time during the year next subsequent to March,

[illegible] and control of the same during said time?

Answer. I had the possession under Peleg Wilbur as mortgagee up to the 27th of October, 1836. Then, in the month of October, Morgan and Fanning proposed to me to consolidate my debts, allowing me to work out, being then under a contract to Wm. J. Harris to manufacture cotton and return cloth, as stated by him here yesterday in his letter to me. They wished then, in order to a consolidation of my debts, to get possession of the property; and said it was absolutely necessary they should have possession before they could do any thing about it. I then went to Rhode Island, stated to Mr. Wilbur what they proposed to do; and Mr. Wilbur said if they would do that—consolidate my debts—I might give them possession. I came back; they drew up this instrument, now marked A by the master, and I continued to run under this instrument, A, till the month of March, 1837. John W. Fanning had purchased my right of redemption in the property I had mortgaged at a sale by commissioners in, I believe, October, 1836. In the fore part of March, 1837, John W. Fanning, with an officer, turned me out of possession and locked up the mill, and kept the keys, and I had nothing more to do with it. The machinery was in the mill at the time.

Question 4. If other persons than Wilbur had the possession and control of said machinery during said time, did they have the same under a written lease or not?

Answer. I had possession myself, under the instrument already produced, and marked by the master A.

Question 5. If under a written lease, who were the parties to that lease, what was its date, and the terms thereof? Please produce and annex a copy of the lease, if you have it.

Answer. The lease was dated 27th day of October, 1836. Christopher Lippitt and John W. Fanning were the parties. The instrument A, already referred to, is, I believe, a copy of the lease, and to that I refer for a knowledge of the terms and conditions. The original of this was kept by Morgan and Fanning. I had no copy, as only one copy was made and executed.

Question 6. How long did the lessee continue in possession of said machinery under said lease or otherwise; and how and by whom was the possession taken from said lessee? State particularly.

Answer. I have stated that already. I continued in possession from the 27th of October, 1836, to the fore part of March, 1837, under the lease, when I was turned out by an officer and Mr. Fanning, as heretofore stated.

Cross examined by R. G. Hazard, esq., for complainant.

Question 1. Was Peleg Wilbur frequently at the mill during the year from March 1836, to March, 1837?

Answer. I don't recollect that he was. I've no recollection of his being there more than once.

Question 2. When did you first see him in relation to the proposal of Morgan & Fanning to consolidate your debts?

Answer. The first time was when I [illegible] pose; it was between the 15th of Mar[illegible] the [illegible] of this lease. No, I am mistaken there; it was between the 15th of October, 1836, and the date of the lease. I saw him at his residence at Washington factory.

Question 3. Did you refuse to give peaceable possession of the mill, at the termination of his lease, to Mr. Fanning?

Answer. I never was asked to give possession.

Question 4. What time elapsed, after you saw Mr. Wilbur on the subject above mentioned, before he consented to your giving possession to Morgan & Fanning?

Answer. He consented at the time I saw him.

Question 5. Were any others of the mortgagees present?

Answer. I don't recollect that there was any other present.

Question 6. What rent did you pay Morgan & Fanning under that lease?

Answer. The rent was finally settled on the final settlement between Mr. Wilbur and John W. Fanning. $800 was to be paid rent by Mr. Wilbur after he had possession by mortgage, up to the 27th of October, 1836. They claimed $200 for rent from the 27th of October to the time I was turned out, to be paid by me. This sum I paid.

CHRISTOPHER LIPPITT.

A.

Referred to in C. Lippitt's testimony.

Know all persons to whom these presents shall come, that whereas John W. Fanning has purchased in the equity of redemption in and to the following property, situated in Griswold, in the village of Jewett City, of which I am now in possession, bounded and described as follows, viz: The first tract is bounded northerly by the turnpike road; easterly by land of John W. Fanning; southerly and westerly by land of John Slater, with a dwelling-house, barn, and other buildings thereon, it being the place where I now live. The second tract is the factory property and privileges; bounded southerly by the road leading to Pashong meeting-house; southerly by land of Dr. Lucius Tyler; easterly by land of said Tyler and land of Thomas H. Wilson; and northerly by land of said Wilson and land now in the possession of Andrew Lamb, in right of his wife, with a cotton factory, the machinery therein, four dwelling-houses and other buildings thereon, containing about six acres, with all the privileges thereto appertaining; all of which property I hereby surrender up to the said Fanning, and give him the possession of the same. And I do hereby agree from this time to occupy and possess the same under the said Fanning, and pay him a reasonable rent therefor. And I, the said Fanning, do hereby agree to permit the said Lippitt to occupy and improve the premises for one month, from this day, he rendering and paying me a reasonable rent therefor; he, the said Lippitt, keeping the premises in repair, and improving the same, according to the rules of good hus-

agree, on my part, to occupy and improve the premises in a husbandlike manner, and to keep the same in repair, and to pay the said Fanning a reasonable rent therefor, and peaceably to surrender up the possession of the same at the expiration of one month.

In witness whereof I hereto set my hand, this 27th day of October, 1836.

(Copy.) CHRISTOPHER LIPPITT,
JOHN W. FANNING.

Endorsement.—Christopher Lippitt, surrender of premises, and J. W. Fanning's lease of the same, October 27th, 1836.

A true copy of original which was filed with master, Sept. 14th, 1848.

Deposition of Andrew C. Lippitt.

Examination of Andrew C. Lippitt, of New London, Connecticut, for defendant.

Questioned by W. H. Potter, esq.

Question 1. Have you at any time seen the original lease, of which a paper marked A, now exhibited to you, is by Christopher Lippitt, on his examination, described as being a copy?

Answer. I have seen the original. It was in the possession of Samuel C. Morgan, of Norwich, the attorney of John W. Fanning. I saw it recently, say in the latter part of March or the first part of April. I requested him to let me have it, to be used in this case. He refused to let me have it. I then requested leave to take it and make a copy. This he refused to let me do, saying that his clerk, the cashier of the bank, would make a copy. The copy here produced, marked A, was made by the cashier aforesaid. I compared it with the original, and know it to be a true copy.

Cross examined by R. G. Hazard, esq.

Question 1. Does not said lease relate to other property than the mill property formerly owned by your father?

Answer. The terms of it relate to the house in which my father lived, the mill property and real estate connected with it, and the machinery therein.

Question 2. What was the value of the property where your father resided, and embraced in said lease?

Answer. I am not a judge of the value of property in that place, but I always understood that my father gave three thousand dollars for the lot and house in which he lived, and between $1,100 and $1,200 for the factory privilege, buildings and appurtenances, without machinery or running gear.

Question 3. Do you know of cotton or other property having been attached as the property of Christopher Lippitt, which was claimed to belong to William J. Harris; if yes, at what time was such attachment made?

Answer. There was property attached [illegible] kind of property it was, whether cotton [illegible] manufactured of cotton, or when the attachment was made. The trial respecting it came off, I should think, in the year 1837; from which I infer that the attachment was made in 1836. It, the trial, might have been later than 1837, but it was before 1839.

Question 4. Who attended to that suit on behalf of Mr. Harris, employed counsel, &c.?

Answer. I do not know who employed counsel. I was not present at the time of the trial.

Question 5. Did or did not Mr. Peleg Wilbur attend to that suit?

Answer. I do not know that Mr. Wilbur employed the counsel in the case; nor do I know, otherwise than from hearsay, that he attended the trial.

A. C. LIPPITT.

Deposition of Oliver C. Wilbur.

Examination of Oliver C. Wilbur, of Coventry, R. I., for defendant.

Questions by W. H. Potter, esq.—

Quest. 1. Are you engaged in the manufacture of cotton; if yes, how long have you been so engaged?

Ans. I am; and have been so engaged for the 20 years last past.

Quest. 2. Did you, in the year 1827–'8, purchase any new cotton machinery; if yes, of whom; and what was the cost of throstle frames per spindle?

Ans. The concern in which I was interested, the Washington Company, did purchase some cotton machinery in the year 1827–'8. A considerable part of it we purchased of Stanford, Newell & Co., of Providence; we paid for throstle frames, per spindle, $7 50. This was in April, 1828. In September, 1827, also, we purchased throstle frames of the same company, at the same price.

Quest. 3. What was the cost of mules the same years, 1827–'8, per spindle?

Ans. We purchased mules of Newell & Co., in 1827–'8, at $3 per spindle.

Quest. 4. Have you the bills of said purchases?

Ans. Yes, I have them now in my hands, and here exhibit them to the master and the counsel in the cause.

Cross examined by R. G. Hazard, esq.

Quest. 1. Who were the members of the Washington Company in 1827–'8?

Ans. Peleg Wilbur, sen., Peleg Wilbur, jun., Oliver C. Wilbur, and Thomas D. Wilbur.

OLIVER C. WILBUR.

Deposition of Cyrel Babcock.

Examination of Cyrel Babcock, recalled by defendant Sept. 14.

Question by W. H. Potter for defendant—

[illegible] stated, in answer 2d, that your charge for making throstle frames, per spindle, was $5 in 1836. If there was a diminution in the cost of manufacturing the same, from $7 50 to $5 per spindle, between 1828 and 1836, would there not be the same diminution in the cost of manufacturing, or value of other cotton machinery in the same time?

Ans. My opinion would be that it would come to about that point, taken as a whole. I wish to be understood as speaking of one and the same kind of machinery.

CYREL BABCOCK.

Defendant waives cross examination.

Deposition of Elisha Harris.

Examination of Elisha Harris, of Coventry.

Questioned by W. H. Potter, for defendant—

Quest. 1. How long have you been engaged in the business of manufacturing, and are you acquainted with the value of cotton machinery at different periods since 1826?

Ans. I have been in the business of manufacturing about 30 years, and have been acquainted with cotton machinery during that time.

Quest. 2. What was the value of throstle frames in 1827 and 1828, and also in 1836?

Ans. I have here no means of answering the question, and have no recollection as to the facts inquired about. In my judgment, cotton machinery made in 1827 and 1828, and run for a period of eight years, would not be worth more than one-half its cost.

Quest. 3. Suppose throstle frames to have cost $7 50 per spindle in 1827–'8, and the price or cost of the same to have fallen to $5 per spindle between 1827–'8 and 1836, would there not be the same relative diminution in the price or cost of other cotton machinery?

Ans. I should think that there would be about that corresponding decline in other machinery. A manufacturer of machinery could better answer the question.

Quest. 4. What was the cost of manufacturing per yard of yard wide sheetings, of yarn No. 16 to 18, 44 slaie, from the year 1828 to 1835, inclusive?

Ans. I never manufactured cloth so coarse as this myself; but judging from my experience in work somewhat finer, I should think the cost would not exceed 2½ cents per yard; that is, the cost of labor and materials, other than cotton. If the manufacturer labored himself, of course the cost to him would be somewhat less.

In reply to plaintiff. I know nothing of the Lippitt machinery. Machinery might depreciate more than I have stated, if badly used; I assume that it has been fairly used, when I say it would depreciate to half cost.

ELISHA HARRIS.

Deposition of Charles Jackson.

Examination of Charles Jackson, of Providence.

Questioned by W. H. Potter, for defendant.

I have been engaged in the business of [illegible] years.

As to the cost of cotton machinery in the years 1827 and 1828 to 1836, I cannot speak particularly.

In my judgment, cotton machinery made in 1828, and used for eight years succeeding, would depreciate about one-half in value, and would not probably sell for more than one-half. I would not give that; I am not particularly favorable to old machinery. Some other people, perhaps, would give more.

I understand throstle spinning to be a leading branch of cotton machinery, and I think the decline in the cost of throstle frames would be about the ratio of the decline in the cost of other machinery. Some branches might decline more, and some not so much.

CHAS. JACKSON.

Deposition of Horatio N. Slater.

Examination of Horatio N. Slater, of Providence, for defendant.

Questioned by Wm. H. Potter, esq.

I am engaged in manufacturing both cotton and woollen goods, and have been so engaged for about twenty years past.

I should think that the falling off in the price of throstle frames, between 1827 and '8 and 1836, say from $7 50 per spindle to $5, was slightly greater than the falling off in the prices of other machinery generally; mules, looms, dressers and cards, according to my recollection, fell off in price about 25 or 30 per cent.

Whether other kinds of cotton machinery would decline in any given period in the same ratio as throstle frames, would, I think, depend much upon circumstances; as, for instance, throstle frames might be paying a greater profit to the builder than other machines.

Within the period above named, the Field speeder and the leather apron feeder fell off in value quite as much as spinning frames.

Quest. What was the cost of manufacturing per yard of yard wide sheetings, of yarn No. 16 to 18, 44 slaie, from 1828 to 1835, inclusive; that is, cost of labor and materials, other than cotton?

Ans. There was a reduction in cost, during that period, of ¼ a cent a yard; the cost was from 2½ to 2¼ cents per yard. At some mills probably the cost was greater.

HORATIO N. SLATER.

Deposition of John W. Fanning.

In the case Samson Almy, of Plainfield, in the State of Connecticut, plaintiff, and Peleg Wilbur, of Coventry, in the State of Rhode Island, defendant, in the United States court, now pending before John P. Knowles, esq., of Providence, in said State of Rhode Island, as master in chancery, to be used before said master, John W. Fanning, of Griswold, State of Connecticut, was called by the defendant.

Question by Peleg Wilbur—

Was the signature of your name to the instrument now produced, purporting to be a delivery of possession by Christopher Lippitt of his

[illegible], and a lease from you back to him of the same, written by you, [illegible] thereof fulfilled?

Answer. This signature is mine; I do not recollect the particulars about it, whether they were fulfilled or not.

Quest. What was the object of the said written instrument?

Answer. Cannot tell further than its import.

Cross examined by R. G. Hazard, for complainant.

Quest. 1. Did you, in March, 1837, take possession of said mill and machinery with the aid of an officer?

Ans. My impression is that we did have to resort to the aid of an officer.

2. Did you have possession before you took possession, as aforesaid, with aid of an officer?

I do not recollect.

3. If you had been previously in possession, would you have required the aid of an officer?

Ans. The presumption is that we should not.

Q. 4th. Was any other person interested with you in the matter of that lease?

Ans. Samuel C. Morgan was joint partner with me, having a joint interest. Mr. Morgan then resided here, and continued to do so until the year 1843. Mr. Morgan wrote the lease; it is in his handwriting.

Q. 5th. What was the old iron worth (after the fire) which was left of the machinery in the mill?

Ans. I think about two hundred and fifty dollars.

Direct examination resumed.

Question by deft. Did not Christopher Lippitt hold over after the time specified in said lease, and was there not other real estate covered by the mortgages under which you took possession, which was not included in the possession given by Lippitt, October 27, 1836, which made it necessary to take out a writ of ejectment in order to recover or gain possession of the whole?

Answer. The homestead was also included in the lease given; it included all the property, but he did hold over. I do not recollect as Mr. Lippitt gave any actual possession; I do not recollect of Mr. Lippitt giving us possession of the property. I infer, from the fact of being obliged to resort to legal process, that he did not give possession.

Had you bought the equity of redemption in said property at the date of that lease?

Answer. I had.

Did you not claim the rent after that?

Ans. I do not recollect.

Cross examination resumed.

Q. 1. Did you exercise any control over the mill or machinery before you took possession with an officer?

Ans. I should say not.

Direct examination resumed by P. Wilbur.

After the execution of that instrument [illegible] to be a delivery and lease of property, could Peleg Wilbur have had any control over it?

Ans. I do not know what interest you had in the lease. I do not know as you had any interest in it, as your name does not appear.

Quest. Had I any control over it?

Answer. I should say you had no control, judging from the appearance of the instrument.

JOHN W. FANNING.

Question. Had I any control over the property?

Answer. I do not know as you had any, directly or indirectly.

Cross.

Q. Do you know that Peleg Wilbur had not the control of the property?

Ans. I do not.

JOHN W. FANNING.

STATE OF CONNECTICUT,
New London county, ss:

GRISWOLD, *Sept.* 18, A. D. 1848.

Then appeared the aforenamed John W. Fanning, and after being carefully examined, cautioned, and sworn, that the answers he should give to the questions about to be propounded to him, should be the truth, the whole truth, and nothing but the truth, gave the foregoing deposition, which was reduced to writing, and by said John W. Fanning subscribed in my presence. Taken at the request of Peleg Wilbur, to be used in a hearing before John T. Knowles, esq., master in chancery, in the case Samson Almy vs. Peleg Wilbur, now pending in the United States circuit court for the district of Rhode Island. The adverse party was not by me notified of the time and place of taking this deposition, but was present, by Rowland P. Hazard, esq., his agent or attorney, and assented to the taking of said deposition.

Before me, ARNOLD BOWEN,
Justice of the peace.

Fees, taking deposition,	$1 00
Deponent's fees,	39
Paid by P. Wilbur,	$1 39

Christopher H. Lippitt's deposition.

Commission.

UNITED STATES OF AMERICA,
Rhode Island district, sc.

The circuit court of the United States, within and for the Rhode Island district, to any commissioner of the circuit court, or judge, [L. S.] justice of the peace, public notary, or other person, by the laws of North Carolina authorized to take depositions.

confidence in your wisdom, prudence, and fidelity, we [illegible] and by these presents do authorize and empower you to take the answers to the interrogatories hereunto annexed, of Christopher H. Lippitt, to be used in a certain cause in equity now pending in said court, wherein Samson Almy is complainant against Peleg Wilbur, respondent.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully, on oath, touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced, to writing, and to be subscribed by each of said witnesses in your presence; and the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to John P. Knowles, esq., master in chancery, Providence, R. I., as soon as may be.

In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, our chief justice, at Providence, this ninth day of February, in the year of our Lord one thousand eight hundred and forty-nine.

JOHN T. PITMAN, *Clerk.*

N. B. You shall not, except by the consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories, or suggestions with the deponent, whilst giving deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

Interrogatories

To be propounded to Christopher H. Lippitt, in matter Samson Almy vs. Peleg Wilbur, before John P. Knowles, esq., master in chancery, propounded on the part of Peleg Wilbur.

Interrogatory No. 1. Were you present in the city of Providence on the 25th day of November, A. D. 1836, with Peleg Wilbur, when a demand was made on him by Samuel Bailey for certain machinery?

Interrogatory No. 2. If you *was* present, please state who else was present at the time. Where were you in said city when said demand and conversation took place?

Interrogatory No. 3. What was the occasion of your being there in said city of Providence; was it or not as a witness on the trial of Cornelius G. Fenner for perjury before Judge Story?

Interrogatory No. 4. Please state what [illegible] answer or reply to said demand of said Bailey [illegible] Bailey. Please state what said Wilbur then said, if any thing, [illegible] said Bailey, in relation to his interest in, or control over, the machinery, the subject of said demand, or explanatory thereof.

Interrogatory No. 5. Do you know any thing in relation to who had possession or control over said machinery between the date of mortgage to him (Wilbur and others) Dec. 8, 1835 and the spring of 1837; did or not said Wilbur have possession or control of said machinery during said time, or any part thereof; if so, what part of said time, when it commenced, and when it terminated, and what was the character of the same; state fully, and if he had not control over it, who had?

Interrogatory No. 6. Did you make a contract with Asa and Joshua Fenner, or either of them, on or about the first of April, A. D. 1836, by which you leased the machinery above referred to, in the mill of your father, to them or either of them?

Interrogatory No. 7. If you so made such a contract with them, or either of them, did you, at the time of making said contract, or ever at any other time, state to them, or either of them, that you was (in so doing) acting for your uncle, or that the mill was to be run for your uncle (said Wilbur) or any thing of that kind or effect?

Cross interrogatories to Christopher H. Lippitt.

1st. Were you not present, soon after the demand made on Peleg Wilbur by Samuel Bailey, at a conversation in which the matter of the surrender of possession by Christopher Lippitt to Mr. Fanning, or to Morgan and Fanning, and a lease by them, or one of them, to said Lippitt, was suggested to Peleg Wilbur; and did he not reply that if such was the case, then he was not in possession at the time of said demand by said Bailey, or words of similar import?

2d. At what time did said conversation occur; where and who were present or within hearing of the same?

3d. What communications have you received from Peleg Wilbur or other persons, relating to the deposition you are giving, or to the case to which it refers? State fully and particularly all such communications.

4th. Will you append hereto any such communications which are in writing? If not, state the date and the post mark of same.

UNITED STATES OF AMERICA,
Rhode Island district, sc.

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, February 9th, 1849.

I, John T. Pitman, clerk of said court, do hereby certify, that the above and foregoing three pages contain a true copy of the direct and cross interrogatories, to be propounded to Christopher H. Lippitt, in the case in equity, Samson Almy vs. Peleg Wilbur, now on file in this office, duly examined and compared.

In testimony whereof I have hereunto set my hand and the seal of said court, on the day and year above written.

[L. S.] JOHN T. PITMAN, *Clerk*.

Deposition.

STATE OF NORTH [illegible] *county of New Hanover.*

In pursuance of the annexed commission, I, Thomas H. Wright, one of the justices of the pence of the court of pleas and quarter sessions, for the county of New Hanover aforesaid, proceeded on this the twenty-third day of February, 1849, to take the deposition of Christopher H. Lippitt, to be read in evidence in a certain suit in equity, now pending in the circuit court of the United States, within and for the Rhode Island district, wherein Samson Almy is complainant and Peleg Wilbur is respondent; and the said Christopher H. Lippitt being by me first duly sworn upon the holy evangelist of Almighty God, deposes and says as follows, in answer to the several interrogatories hereunto annexed.

To the first interrogatory he saith:

Answer. I was present with Peleg Wilbur at the time and place alluded to, and heard a demand made on him for machinery.

To the second interrogatory he saith:

Answer. No others were present, and the demand was made of said Wilbur in the sitting-room of the Manufacturer's hotel.

To the third interrogatory he saith:

Answer. I do not recollect what was the object of my business to Providence, at the time referred to; it might or might not have been as a witness in the trial referred to, as I was there at one time as a witness in said trial, and was often there on other business.

To the fourth interrogatory he saith:

Answer. Mr. Wilbur replied, I cannot deliver that machinery to Mr. Almy. I am not in possession of it, and have not the disposal of it. My interest in it is only as one of several mortgagees, or words of similar import.

To the fifth interrogatory he saith:

Answer. About the time of the mortgage to Wilbur and others, the stock in the mill, in different stages of manufacture, the tools and other personal property in and about the same, together with the real estate, were attached by Christopher Lippitt's creditors; said Wilbur receipted and made himself responsible to the sheriff for the stock in progress of manufacture, and other personal property in the mill, which was estimated and valued at a certain sum then agreed upon with the sheriff, and the sheriff gave him possession of the mill, stock, and personal property in and about said mill; said Wilbur took possession to protect the property from other attachments and to run out the stock in the mill. I superintended the running out said stock, and from the avails paid to the sheriff, his claim on said Wilbur, and the balance to said Lippitt, my father. Said Wilbur received nothing—not even personal expenses; said Wilbur furnished cotton to said Lippitt to manufacture for his (Lippitt's) sole benefit; and in this way held possession of mill and machinery until about the last of February or forepart of March, 1836, when he gave it up entirely to said Lippitt. The last of March, 1836, the said Christopher Lippitt having possession of said mill and machinery,

and the owner in equity made an assignment of the [illegible] fit of all his creditors, according to the law[illegible] State of Connecticut. Said Lippitt remained in possession of t[illegible] consent of the assignees, he paying rent to them up to the time of their sale of said property. Said Lippitt still held possession, from that time to the surrender of said property to John W. Fanning, the 27th of October, 1836. Fanning having purchased the right of redemption at public sale of the same, and one month from that date by a lease from said Fanning, said Lippitt continued to hold possession. After the expiration of said month the said Lippit continued to hold possession of the mill and machinery until March, 1837. But by what right he held possession from the expiration of said month until March, 1837, I am unable to state. Perhaps I ought to state, that from the first of April, 1836, to some time in the summer of said year, Joshua Fenner occupied the mill and run the machinery under a contract with me, the deponent, when he gave it up, and Christopher Lippitt resumed the possession. With this exception, said Lippitt held unbroken possession from the time the mill and machinery were surrendered by Wilbur, to March, 1837; Wilbur at no time had the disposal of the machinery. He had possession from the time the sheriff gave him possession till the last of February or forepart of March, 1836, and for the object before stated; and at no time received any compensation or profits accruing from the operations of said machinery.

To the sixth interrogatory he saith:

Answer. I did make a contract with Joshua Fenner, dated 16th of February, 1836, to be entered upon the first day of April following, leasing to him the mill and machinery herein referred to, for the purpose of manufacturing cotton sheetings for me. This lease was to continue for one year.

To the seventh interrogatory he saith:

Answer. I made the contract with Joshua Fenner as before stated, but never entered into any with Asa Fenner, and the contract with said Joshua was made in my own name. I did not state to either of the Fenners, when making said contract, that I was in so doing acting for Peleg Wilbur, my uncle, or that the mill was to be run for said Wilbur, or any thing of that kind or effect.

To the first cross interrogatory the deponent saith:

Answer. I have no recollection of being present at the conversation referred to.

To the second cross interrogatory he saith:

Answer. As before stated I have no recollection of any such conversation having taken place at any time.

To the third cross interrogatory he saith:

Answer. I received from Peleg Wilbur the letter and copies of the contract between me and Joshua Fenner, and the instrument of surrender by C. Lippitt to John W. Fanning With the exception of these papers, I have received no other communications from Peleg Wilbur or any person.

To the fourth cross interrogatory he saith:

[illegible] handed to the commissioner who is executing the commission [illegible] the papers referred to in the answer to the third cross interrogatory, with the request that he would append the same.

CHRISTOPHER H. LIPPITT.

Sworn to and subscribed before me, this 23d day of February, A. D. 1849.

THOS. H. WRIGHT, *J. P.* [L. S.]

Papers annexed to foregoing deposition.

This agreement, entered into this 16th day of February, one thousand eight hundred and thirty-six, by and between Christopher H. Lippitt, of Griswold, county of New London, and State of Connecticut, on the one part, and Joshua Fenner, also of said Griswold, on the other part, witnesseth: That the said Lippitt, on his part, agrees to furnish Joshua Fenner with cotton necessary for the manufacture of cotton sheetings in the factory now occupied by Peleg Wilbur, and to receive the goods of him at the factory, baled and in good order for market, and pay on the delivery of the invoice of goods, three cents per yard cash unto the said Fenner, which shall be in full for manufacturing of said goods. And the said Fenner, on his part, agrees to receive from the said Lippitt all the cotton necessary for the manufacture of cotton sheeting as aforesaid at the factory, and that proper and prudent care shall be taken of the same in the various stages of manufacture, and that he will manufacture the same into yard wide sheeting from number eighteen yarn, in a workmanlike manner, and deliver the whole of said sheeting, together with all the waste of the factory, unto the said Lippitt, and as soon as reasonably can be done after the stock is received.

And it is further understood and agreed that a skein of yarn shall be reeled every day, and the average number from the six skeins at the end of the week, shall be the number to cast the week's work from. Number eighteen shall be three cents per yard, and if finer or coarser the price shall vary according to the number of the yarn.

And it is also understood and agreed, that the said Fenner is to have the use of the factory buildings and machinery free from any charge, except the machine shop, which he is to occupy only for doing repairs to the mill; said Fenner is to account to the said Lippitt for the rents of the dwelling-houses connected with factory. And it is also understood and agreed, that the said Fenner is to do all repairs of the factory machinery, except the main gears and water-wheels, which are to be kept in repair by the said Lippitt. If the cotton sacks are not sufficient to bale the goods in, the said Lippitt is to furnish baling cloth sufficient to bale them in. The waste is to be kept clean and separate as it now is, and no more to be made than the machinery will make by good management.

It is also understood and agreed, that this contract is to commence on the first day of April next, and to continue one year from that time.

CHRISTOPHER H. LIPPITT,
JOSHUA FENNER.

Know all persons to whom these presents shall come, that I, John W. Fanning, have purchased in the county of Washington, and unto the following property, situated in Charlestown, in the village of Jewett City, of which I am now in possession, bounded and described as follows, viz: the first tract is bounded northerly by the turnpike road, easterly by land of John W. Fanning, southerly and westerly by land of John Slater, with a dwelling-house, barn, and other buildings thereon, it being the place where I now live. The second tract is the factory property and privileges, bounded southerly by the road leading to Pachong meeting-house, southerly by land of Dr. Lucius Tyler, easterly by land of said Tyler and land of Thomas H. Wilson, and northerly by land of said Wilson and land now in the possession of Andrew Lamb in right of his wife, with a cotton factory, the machinery therein, four dwelling houses, and other buildings, containing about six acres, with all the privileges thereto appertaining; all of which property I hereby surrender up to the said Fanning, and give him the possession of the same; and I do hereby agree from this time to occupy and possess the same under the said Fanning, and pay him a reasonable rent therefor. And I, the said Fanning, do hereby agree to permit the said Lippitt to occupy and improve the premises for one month from this day, he rendering and paying me a reasonable rent therefor; he, the said Lippitt, keeping the premises in repair, and improving the same according to the rules of good husbandry. I, the said Lippitt, do agree on my part to occupy and improve the premises in a husbandlike manner, and to keep the same in repair, and pay the said Fanning a reasonable rent therefor, and peaceably to surrender up the possession of the same on the expiration of one month.

In witness whereof I hereunto set hand this 27th day of October, 1836.

CHRISTOPHER LIPPITT,
JOHN W. FANNING.

(Copy.)

PROVIDENCE, *February* 9, 1849.

DEAR SIR: You will be called upon to answer certain interrogatories relating to the Hazard case, and in so doing I hope you will be particular in stating what you know, and careful as to dates.

For the purpose of refreshing your memory, I have here enclosed a copy of the agreement with Fenner, and the surrender of possession by your father, and lease from Fanning to him.

The documents may be sent direct to you. I hope you will have them executed and returned at your earliest convenience.

The last accounts from Westerly I have from your brother Albert. Your sister Wait was more comfortable; but still confined to her bed; other friends in usual health.

Respectfully, yours,
PELEG WILBUR.

This commission will be sent to the post master by this day's mail, you will do me a favor if you will call at the office and see that it is

[illegible] head of some person as directed, and pay the expenses attending the same.

P. W.

(Subscribed) Postmark Providence, February 9, R. I., 10.

Mr. CHRISTOPHER H. LIPPITT,
Wilmington, North Carolina.

Rec'd February 14, 1849.

Examination of Samson Almy, complainant, on suggestion of counsel for defendant.

Questioned in written interrogatories by W. H. Potter, for defend't.

Question 1. When was the contract annexed to your bill, marked C, actually entered into?

Answer. Well, I suppose it was made about the time of the sale, 3d month 9, 1830, which is the date of it; there might have been some conversation relating to the purchase before the bill of sale; I cannot answer the question more definitely.

Question 2. When was said contract signed and delivered to you? State particularly when and where the same was done, and who was present.

Answer. It was a great while ago to remember about such a matter; it is so long since that took place, that I cannot recollect the precise time and place when that contract was signed and delivered, nor who was present.

Question 3. When was the signature of Thomas R. Hazard put to the ratification of said contract?

Answer. I have no recollection in regard to this matter further than is suggested by the date; it is dated 3d month 10th, as appears by the printed copy before me.

Question 4. What was the consideration paid by you for said contract; in what did that consideration consist, money or what; and by whom and when paid, and to whom? State particularly.

Answer. In reply I must give you the history of the whole matter. In 1829, I think, I made arrangement with Rowland G. Hazard, Low & Fenner, and Christopher Lippitt, to furnish stock to Christopher Lippitt under the contract made by R. G. Hazard & Co. and Christopher Lippitt, they agreeing to give me one-half of the profits for doing the business; we went on in that way until I made the purchase of the machinery, after which I became sole owner and went on under the contract; at the time of R. G. Hazard & Co's failure they owed me 5 or 6000 dollars due by note, and the consideration of the contract or bill of sale was those notes so far as they were required, that is, the agreement was that that bill of sale, so far as it went, should go to cancel these notes; the notes thus cancelled, it is my impression, were surrendered to R. G. Hazard as agent for the assignees; I can't say that Mr. Hazard acted as agent of the assignees when I surrendered the notes to him; he did when the contract was made; I can't remember when I surrendered the notes to Mr. H., nor how many of them there were; I could ascertain if time were allowed.

Question 5. If you paid any consideration, did you take any receipt therefor; have you any papers or books, evidencing [illegible] relating to this consideration, or the payment of the same? If so, please produce them.

Answer. I have answered this already. I gave up the notes which I held against R. G. Hazard and Co. I have no books or papers of the description inquired for; and the reason is this: My notes against the Hazards originated in this way: I was doing business in company with William Almy, under the name of William and Sampson Almy, at the time the notes were given; keeping no books of my own. I bought in Boston, for my firm, a quantity of work; and to accommodate the Messrs. Hazards, I gave, for a quantity of wool purchased by them at the same time, of the same merchant, my individual note, as I think, for the amount of my purchase for my firm, taking from the Hazards their notes to me individually for the amount I had assumed for them. These notes I entered upon no book, keeping no books of my individual business, but put in my pocket-book, relying upon their being paid by the Hazards at maturity, in season to enable me to pay the notes I had given for the wool, as above stated. The notes of the Hazards were not paid at maturity, as the Hazards had failed; and consequently I was obliged, out of my individual funds, to pay the notes I had given as above for Hazard and Co.

Question 6. What was the inducement for you entering into said contract?

Answer. It was to get my pay of the Hazards, and also thinking it might prove a good investment.

Question 7. *Was* you or not a creditor of R. G. Hazard & Co., at or about the time of their failure in 1829? If yes, state when and how your debt originated, and its amount; and when, by whom, and to whom, and in what manner the said debt was paid.

Answer. An answer to this interrogatory is contained in my answer to questions 5th and 4th. If necessary to repeat my statements, I can do so. I can give the names of the sellers of the wool above referred to, and the date of the purchase, if allowed time for inquiry.

Question 8. Hav*ing* you any papers evidencing the manner in which said debt originated, or in which the same was paid? If so, please produce them.

Answer. I have none, for the reason given in reply to a former question.

Question 9. Has Rowland G. Hazard, or said Hazard with any other person, any interest, direct or indirect, in the result of this suit?

Answer. No; not any. No person but myself is interested.

Question 10. Has there not been, or is there not, an understanding, express or implied, between you and said Hazard, directly or indirectly, by which, in case you recover in the suits against Mr. Wilbur, or either of them, the said Hazard will in some way or other be benefitted?

Answer. Not one particle; in no shape, manner, nor form.

Question 11. Has there been, or is there, expressly or impliedly, any understanding between said Hazard and you for his services or agency in your behalf in this suit? If yes, state what it is particularly.

Answer. I think there was once a conversation between us in regard to payment for his services; but he declined receiving any compensation, or making any arrangement in relation to compensation; and there is not now, nor has there ever been, any agreement or understanding that he is to be paid by me any thing for his services.

Question 12. What compensation do you expect to make said Hazard for his services in this suit?

Answer. I don't expect to make him any compensation.

(The examinant here remarked: "I think that is an improper question, and ought not to be asked;" and Mr. Potter, for defendant, insists that this shall be minuted by the master. The examinant says he made the remark to Mr. Potter, not to the master.)

Question 13. Do you or not expect or intend that said Hazard will in some way receive some benefit or advantage, in case you recover in said suits, which he would not receive in case you do not succeed; if yes, how and in what manner? State particularly.

Answer. I have no knowledge of any mode in which Mr. Hazard will be benefitted in case I recover in said suits.

Question 14. Did you make a general assignment or conveyance of your property about the year 1841?

Answer. I did not make an assignment about the year 1841. Samson Almy & Co. did make a general assignment of their company property.

Question 15. If the contract (C) was made and delivered on the 9th March, 1830, why did you write the letter (page 111, printed copy) you did, dated the next day; and why, in said letter, did you conceal from Mr. Lippitt the fact that you had purchased it?

Answer. I had my reasons for it. Previous to that time, Mr. Lippitt and I had had some conversation respecting my purchasing for him. He had no means of paying for it, and I didn't feel willing to furnish the means necessary to purchase it; and, at that time, I had not got the sanction of T. R. Hazard, one of the assignees. My intent in writing the letter was, to convey to him the idea that there was not much prospect of the arrangement he wished being made. I wished not to be abrupt in my communication, and to hurt his feelings.

Question 16. If you took an absolute conveyance of said machinery from said Hazard, on 9th March, 1830, and it then was your own, why was it that as late as February 25, 1831, in your letter of that date to Lippitt, (printed copy, p. 112,) you thought it necessary to get the sanction of the assignees of Hazard & Co. before you could engage a speeder?

Answer. There had always been a dispute between the Hazards and Low & Fenner, in relation to the ownership of one-half the machinery—the Hazards claiming that by understanding they, Low & Fenner, owned one-half, and Low & Fenner denying that they owned any part. In view of this state of things, in the conveyance to me a

provision was inserted that, if Low & Fenner [illegible] boards for one-half, the assignees were to return to me one-half the purchase money. Under these circumstances, having the bump of caution, I thought it prudent to consult with them about the purchase of a new speeder.

Question 17. Why, if you became the real owner in 1830, did you, March 1, 1832, in your letter to Lippitt, (page 112, printed copy,) say that you thought it best not to communicate the state of the mill to Low & Fenner, or either of them?

Answer. When Low & Fenner found that the mill was making money, they set up a claim for one-half the profits, and did actually sue me for one-half, after threatening a long while to do so. I did not wish to furnish them with information to be used against me, and hence used the language referred to in my letter of March 1, 1832.

SAMSON ALMY.

Copy of referees' report in case Hunt & Fenner vs. Hazard & Co.

Filed by defendant, plaintiff objecting.

To the honorable supreme judicial court, March term, A. D. 1839.

The subscribers, referees by consent of parties and by appointment from the court in all matters in dispute between the late firm of Low & Fenner and R. G. Hazard & Co., and the late firm of Low & Fenner & Co. and the said R. G. Hazard & Co., report, that, having been duly engaged, they notified the parties, who attended and were heard in the action now pending before the court, entered Low & Fenner, plaintiffs, and R. G. Hazard & Co., defendants, and also in all other matters in dispute between them.

In the action aforesaid, the referees find that on about the 7th of March, 1828, the said R. G. Hazard & Co. made a contract with one Christopher Lippitt, by which said R. G. Hazard & Co. agreed to procure a certain quantity of machinery to be placed in a mill at Jewett City, commonly called the Griswold mill, belonging to said Lippitt, on the terms specified in said contract; that, in pursuance of said arrangement, the machinery was procured by said R. G. Hazard & Co., and placed in the said mill; that, subsequently, said R. G. Hazard & Co. sold one-half of their interest in the contract aforesaid to said Low & Fenner at cost; that the entire cost of said machinery was $8,926.08, one-half of which, after deducting $302.40½ profits to January 31, 1829, is $4,160.64; to which interest is to be added to the 1st January, 1839, $2,475.79—making, in all, $6,636.43 due from said late firm of Low and Fenner to said R. G. Hazard & Co., as stated in the account hereto annexed, marked A.

The referees further find that said late firm of Low & Fenner paid to said R. G. Hazard & Co., on account of their interest in said contract and machinery, the sum of $4,821.64, which, with interest to January 1, 1839, is $2,710.50, amounts to $7,532.14, leaving a general balance due said late firm of Low & Fenner, from said R. G. Hazard & Co., of $895.71, on said 1st of January, 1839, as stated in said

[illegible] marked A, which said general balance, with interest, the referees order paid by said R. G. Hazard & Co., to the surviving partner of said late firm of Low & Fenner.

In the accounts between the late firm of Low & Fenner & Co. and said R. G. Hazard & Co., the referees find the sum of $1793.19, due from said R. G. Hazard & Co. to said Low & Fenner & Co., on the 1st of January, 1839, as stated in the account hereto annexed, marked B; which said sum, with interest, from January 1st, 1839, the referees order paid by said R. G. Hazard & Co. to the surviving partners of said Low & Fenner & Co.

The costs of said action the referees order paid equally by the parties. They also order ½ of their fees to be paid equally by said late firm of Low & Fenner and said R. G. Hazard & Co. The other ½ they order paid by said R. G. Hazard & Co.

Respectfully submitted to the court.

CHARLES JACKSON,
ORRAY TAFT,
SHUBAEL HUTCHINS,
Referees.

Referees' fees one hundred and fifty dollars.

To the honorable supreme judicial court, at the March term, A. D. 1840.

The subscribers, referees in the case of Low & Fenner vs. R. G. Hazard & Co., having been directed by the court, at the September term, A. D. 1839, to give the parties in said suit a second hearing, touching certain items, checked by the court in the account marked A, annexed to the referees' report at the March term, A. D. 1839, report, that they duly notified the parties aforesaid, who attended and were heard in the premises; and that, after carefully considering the new testimony and reviewing the old, they, the referees, see no reason for altering their award as to the items aforesaid; which items relate to the profits earned by the "Griswold mill" under the Lippitt contract, so called. On the contrary, the referees, by this second investigation, feel strengthened in the award made as aforesaid, and therefore award anew to the said Low & Fenner the balance, as stated in said accounts marked A, viz., the sum of $895.71, with interest after the first of January, A. D. 1839.

The referees, however, make this award conditional, wishing the opinion of the court on the following facts, viz: Some time after the first hearing of the parties in the case aforesaid, the defendants presented to the referees an account for cans, reeds, bobbins, &c., said to have been furnished by Christopher Lippitt, for the Griswold mill, and charged to them. The referees did not find the account credited to said Lippitt on the defendants' books; and, in the absence of testimony in relatian to it, they (the referees) rejected the account. At the last hearing, the defendants, in the presence of the plaintiffs, produced evidence satisfactory to the referees that the articles charged in the account were

furnished for the mill aforesaid by said Lippitt, and that [illegible] charged to the defendants.

In the order of the court referring to the referees for a second hearing, the items checked in the account marked A, the referees are directed to hear new and further evidence in relation to these items. They are not directed to review the award in any other respect. They therefore wish the opinion of the court, whether they could, under the special direction of the court, touching the items aforesaid, open the whole case. If the court is of opinion that the referees could properly do so, then the referees award that one-half the amount of said Lippitt's account, viz., the sum of $323.16, as stated in the account hereto annexed, marked C, be deducted from the amount awarded the plaintiff, which will reduce the plaintiff's balance to the sum of $572.55, with interest after the 1st of January, A. D. 1839. But if the court is of opinion that the referees could not at the last hearing properly consider any other points than those checked in the account marked A, then the referees award as aforesaid, viz., that said balance of $895.71 be paid by said R. G. Hazard & Co. to the surviving partner of the said firm of Low & Fenner, with interest after the 1st of January, A. D. 1839.

Respectfully submitted to the court by

CHARLES JACKSON,
ORRAY TAFT,
SHUBAEL HUTCHINS,
Referees.

MARCH TERM, A. D. 1840.

Which report being read is accepted by the court, and by consent of the parties the court make the deduction of the sum of $323 $\frac{16}{100}$ dollars mentioned in said report, and said report is established.

It is therefore considered and adjudged by the court here that the said Low & Fenner recover and have of the said R. G. Hazard & Co. the sum of six hundred fifty-nine $\frac{3}{100}$ dollars debt, and costs of suit taxed at $106 02 cts.

And that said Low, Fenner & Co. recover and have of the said R. G. Hazard & Co. the sum of two thousand sixty-four dollars and twenty-five cents debt.

Execution issued October 15th, 1840.

I certify the aforegoing to be a true copy of the reports of the referees in the case C. Low et al. vs. J. P. Hazard et al., and the judgment rendered in said case, at the September term of the supreme judicial court for the county of Providence, and State of Rhode Island and Providence Plantation, A. D. 1840, all which appears of record in this office.

Attest: WALTER PAINE, JR., *Clerk.*

75 cts. paid by W. H. P., esq.

And at the same term the following exceptions to the master's report aforesaid were made in the words following, viz:

Exceptions of respondent to master's report.

Objections to report of master appointed in said cases.

Objection 1st. Defendant objects to said report of said master, because he finds the whole interest in the machinery mentioned in the contract of March 7th, 1828, passed by the assignment of that contract to the plaintiff, notwithstanding the terms of that assignment itself, and the evidence offered that Low & Fenner redeemed their one-half as provided in said assignment; and also because said master refused to admit the copy of the report of referees, and judgment of court thereon rendered, stated in said report as evidence to show that the provisions mentioned in said assignment had been complied with by said Low & Fenner, and thereby one-half of said machinery then became the property of said Low & Fenner, and they then and now [are] joint owners with the plaintiff thereof; the defendant then and now contending, that the plaintiff's claim rests on said assignment provisional in itself, that Low & Fenner paid their drafts referred to in it, and that the plaintiff then and now owned only one-half of said machinery, and could not maintain this suit, the other party in interest not being joined, and in no event could recover beyond the extent of his present interest, one-half; and the defendant contending that said evidence was competent and relevant to prove the amount now due the plaintiff, and also strictly competent and relevant under another inquiry specially directed in this case before the master, with the damage sustained by the plaintiff by the non-performance of said contract by said Lippitt, the said contract having been broken by the Hazards before said assignment, and so, if assignable at all, (which the defendant contends it was not,) the plaintiff took it subject to all equities, and with notice of its breach.

And defendant objects to said report in this behalf, because said master states in said report that he did not admit evidence on the ground that a copy of said report was the only evidence submitted to him, as if it was not the best evidence of the facts decided by it, and does not state the other grounds of rejection, if any.

2d objection. Defendant objects to said report because said master refused to allow defendant in account the sum of $323 16, with interest $71, no cts., being amount credited by said referees to said Hazard & Co., for money paid by Lippitt for cans, bobbins, and apparatus, on the ground that the said certified copy of said report was not competent evidence of the fact, said defendant contending that said certified report is competent evidence for this purpose.

3d objection. Defendant objects to said report, because said master has refused to take and consider the sum of $5000 as the value of all machinery at the time of said assignment, and to deduct therefrom the amounts of profits and interest, in order to ascertain amount now due plaintiff, and the value of machinery when converted by defendant, and damage sustained by plaintiff, the defendant claiming before said master; and now that it appeared by the assignment itself, the then purchase and sale by Hazards to plaintiff, that it was the value then put upon it by both of them, and paid (as presumed till contrary appeared)

by plaintiff for it, and that was evidence (and the only evidence) to the plaintiff of its then cost and value to him) of the amount due the plaintiff; and especially, also, the value of the machinery when converted by Wilbur, to be lessened of course by the application of the other evidence as to its true value, on the three points made under head of value, viz., diminution from use, from improvement, and diminished cost of making.

Second. 4th objection. Because said master has deducted only 50 per cent. of said machinery, upon all the testimony on all points in relation to the value; whereas the defendant claimed before the master, and now that the evidence before him established satisfactorily that 33⅓ per cent. of said cost should be deducted for decline in price of machinery, 50 per cent. for use for 8 years, and 25 per cent. for improvements, as per statement handed to master by defendant and now referred to, all which is so claimed by the defendant, was conclusively proved before said master. (See statement at the end of exceptions.)

5th objection. Defendant objects to said report, because said master has taken the statement of the amended answer, page 43, as conclusive upon the fact and point of defendant, possession and control over said machinery, and refused to admit evidence as to the same, and to report thereon in this behalf, notwithstanding said answer was before a court, when said cause was sent to said master with the special instructions on this point, as stated in said report, and said defendant claimed to go into evidence on this point, both as to the extent and nature of defendant's interest in said machinery, and as to his possession of and control over the same; all which defendant claims the master should have admitted under instructions and reported on.

Inquiry 4th. Damage of Lippitt, by non-performance by Hazard & Co. of contract of March 7, 1828.

6th objection. Defendant objects to said report, because said master has reported that said Lippitt has sustained no damage whatever by the non-performance by Hazard & Co. of their contract of March 7th, 1828; and because, although the instructions to the master are specified to inquire and report the damage sustained by said Lippitt by the non-performance of Hazard & Co., and not any one else, of their contract of March 7th, 1828, yet the master has blended Hazard & Co. and the plaintiff together in said transaction, and considered them all as one party to one and the same contract; whereas, the said defendant claimed before the said master, that said Hazard & Co. did break said contract, and that Lippitt sustained direct damage thereby to a very large amount, and that in fact the failure of the Hazards to fulfil their part of said contract was the direct cause of Lippitt's loss of credit, his failure and loss of property, and other direct damage, and indirectly of his ruin and this difficulty.

That said defendant is now, both under said specific instructions in said decree, and by rules of equity, entitled to have the damages sustained by said breach of said contract by Hazard & Co., ascertained by the master in precisely the same manner as said Lippitt might have had

[illegible] instituted in a suit for that purpose by him against said Hazard & Co. immediately after such breach, and as though the master had ended then and there, with no other arrangement with Almy, and to have such damages so ascertained, now brought into this account and charged against the plaintiff.

And the defendant now claims that said report be corrected in these respects, said damages so ascertained upon all the evidence in said and reported by said master.

8th objection. Defendant objects to report of master under the six inquiries, because said master reports that said Lippitt & Wilbur sustained no damage by the non-performance of the contract in pleadings mentioned between plaintiff and defendant, and this objection is based on the same grounds already taken in relation to damages sustained by Lippitt, and also because the master should report that both Lippitt & Wilbur, also in evidence, have sustained great damage by the non-performance of contract in pleadings mentioned between plaintiff and defendant, and that said report be corrected in this respect, and made to conform to claim of defendant.

Statement referred to in 4th objection.

Amount paid by R. G. Hazard & Co - -		$9,567 98
Deduct 2 drawing frames at $175 each, -	$350 00	
1 Brewster's rubber - - - -	350 00	
		700 00
		8,867 00
Deduct 2 Field's speeders, 750 and 550 - -		1,300 00
		7,567 98
Deduct for decline in price, from 1828, to 1836, same kind at the same shop, one-third or 33⅓ per cent., as per bill produced and evidenced of Babcock -		2,522 66
		5,045 32
Deduct for about eight years' constant use for wear and tear, one-half, or fifty per cent. from the value of new machinery at that time, say in the year 1836,		2,522 66
		2,522 66
Deduct for improvements in style, &c., 25 per cent. on the amount thus produced as above stated, say on 2,522 66 - - - - - - -		630 66
		$1,892 00

Which last sum is just about what Lippitt in his deposition taken in this case 2 or 3 years ago said it was worth. See printed copy, p. 99.

And at the November term, 1849, the above exceptions, and those of the plaintiff, were overruled.

And at the same term the following decree was entered:

Decree.

RHODE ISLAND DISTRICT, *sc.*

Circuit court of the United States, November term, A. D. 1849.

Whereas at the June term of this court, held at Newport, in the Rhode Island district, A. D. 1849, this cause came on to be heard upon the report of the master made in this cause at said June term, and upon the exceptions filed thereto by the complainant, and upon the exceptions filed thereto by the respondents, in said cause at said term; and counsel on both sides being heard, and the subject matter of said exceptions having been duly considered, it is ordered, adjudged, and decreed, that the exceptions filed by the said complainant, and the exceptions filed by the respondent, be disallowed, and that said report do stand and be confirmed.

And it is further ordered, adjudged, and decreed that the said complainant have and recover of said respondent the sum of six thousand and thirty-three dollars and ninety-two cents, with interest thereon from the 15th day of June, A. D. 1849, amounting to the sum of six thousand two hundred and fourteen dollars 93 cents, and all costs of suit, said sum being the amount found due by said report, and that execution issue therefor.

LEVI WOODBURY, *Asso. Jus.*

November term, 1849, 9th day.

Entered as the decree of the circuit court per order thereof.

JOHN T. PITMAN, *Clk.*

And at said term of said court the respondent filed the following:

Petition for appeal.

To the honorable circuit court of the United States, in and for the Rhode Island district.

Respectfully represents unto your honors, Peleg Wilbur, of Coventry, in the county of Kent, in said Rhode Island district, that on the twenty-third day of November, A. D. 1849, a final decree was made and pronounced by said court in a certain cause in equity pending in said court, wherein Samson Almy, of Plainfield, in the county of Windham, State of Connecticut, is complainant, and said Peleg Wilbur is respondent.

And the said Peleg Wilbur is desirous of, and now, in open court, hereby claims, an appeal from said decree to the Supreme Court of the United States, next to be holden at the city of Washington, in the District of Columbia, on the first Monday of December, A. D. 1849, that he offers an appeal bond signed by himself as principal, and Oliver C. Wilbur as surety; wherefore he asks that said appeal be allowed here by said court, and said appeal bond be accepted and approved.

PELEG WILBUR.

was allowed, and the following bond filed:

Appeal bond.

Know all men by these presents, that I, Peleg Wilbur, of Coventry, in the county of Kent, State of Rhode Island, as principal, and Oliver C. Wilbur, of Providence, and county of Providence, as surety, are held and firmly bound unto Samson Almy, of Plainfield, in the State of Connecticut, in the sum of twenty-five hundred dollars, to be paid to the said Samson Almy, his heirs, executors, or administrators; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Whereas at the November term of the United States circuit court, within and for the Rhode Island district, holden at the city of Providence, A. D. 1849, on the fifteenth day of November, a final decree was rendered and pronounced by said court in a cause in equity in said court pending, wherein the said Samson Almy is complainant, and said Peleg Wilbur is respondent; from which said decree the said Peleg Wilbur has appealed to the Supreme Court of the United States, next to be holden at Washington, in the District of Columbia, on the first Monday of December, A. D. 1849. Now, the condition of the above obligation is, that if said Peleg Wilbur shall prosecute his said appeal before said Supreme Court of the United States with effect, or in default thereof shall well and truly pay all such costs and damages as shall be adjudged for him to pay by said Supreme Court, or by said circuit court, by reason of said appeal, then the aforewritten obligation shall be absolutely null and void, otherwise it shall remain in full force and effect.

Witness our hands and seals this twenty-third day of November, eighteen hundred and forty-nine; words "twenty-three" interlined before execution.

PELEG WILBUR, [L. S.]
OLIVER C. WILBUR. [L. S.]

Signed, sealed, and delivered in presence of us—
S. ALMY, *witness to both signatures.*
JOHN T. PITMAN.

Nov. 23d, 1849. Approved.

J. T. PITMAN, *Clerk.*

UNITED STATES OF AMERICA,
Rhode Island district, sc.

Circuit court, clerk's office, at Providence, November 30th, 1849.

I, John T. Pitman, clerk of said circuit court, do hereby certify, that the foregoing three hundred and sixty-three pages contain a true transcript of the record in the case in equity, wherein Samson Almy is complainant, and Peleg Wilbur is respondent, duly compared and examined.

In testimony whereof I have hereunto set my hand, and affixed the seal of said circuit court, on the day and year above written.

[L. S.]

JOHN T. PITMAN, *Clerk.*